Center for Families, Children & the Courts
JUDICIAL COUNCIL OF CALIFORNIA • ADMINISTRATIVE OFFICE OF THE COURTS

Update

Working Together for Families and Children

JUDICIAL COUNCIL OF CALIFORNIA • ADMINISTRATIVE OFFICE OF THE COURTS • MARCH 2001 • VOLUME 2, NUMBER 1

Conferences Offer Law Education

Phil Reedy, CFCC Training and Education Coordinator
Blaine Corren, Office of Communications, AOC
Bobbie Welling, Education Division, AOC

The Hilton Hotel in Costa Mesa will have double duty March 21–24, serving as the site of both the Center for Judicial Education and Research's (CJER) 2001 Family Law and Procedure Institute and the Center for Families, Children & the Courts' (CFCC) 15th annual Statewide Educational Institute.

The conferences will present joint seminars on Friday, March 23, focused on meeting the diverse needs of families and children in family court. The joint seminars will include Court and Community Relations in the Family Law Arena, New Perspectives in Domestic Violence, Case Management, Resiliency, Using Child Development Research to Make Appropriate Custody Decisions, Personal and Workplace Security, and The Relationship of Juvenile and Family Court in Child Abuse Cases. Friday's keynote luncheon speaker, E. Mavis Hetherington, Ph.D., will address attendees of both conferences. She is known for her pioneering research exploring how divorce affects children and parents. In one of her studies, Dr. Hetherington tracked 450 families for 20 years to observe the impacts of divorce across generations.

CJER's 2001 Family Law and Procedure Institute will play host to more than 125 judges and 30 faculty members. Planned by the newly appointed Family Law Education Committee, the institute was expanded this year to include a series of intensive all-day workshops for family law judges, commissioners, and referees.

Presiding Judge William C. Harrison of the Superior Court of Solano County, President of the California Judges Association, will address conference participants at the luncheon on Thursday. In addition, the program offers more than 20 workshops addressing issues such as child abduction, complex paternity, high-conflict families, custody and

Continued on page 3

Multiagency Approach

TO A COUNTYWIDE PROBLEM

Lourdes (Lou) Dawson
Manager, Family Court Services
of Fresno County

CALLS TO LAW ENFORCEMENT FOR SERVICE RELATING TO CHILD CUSTODY/VISITATION ISSUES

In July 1998 an ongoing countywide problem surfaced with a simple phone call to Family Court Services from a Northeast Problem Oriented Policing (POP) Team officer. The officer, Ken Dodd, indicated that police officers in the Northeast area were being overwhelmed with telephone calls from parents requesting assistance with child custody disputes and exchanges. Officer

Continued on page 2

IN THIS ISSUE

Multiagency Approach

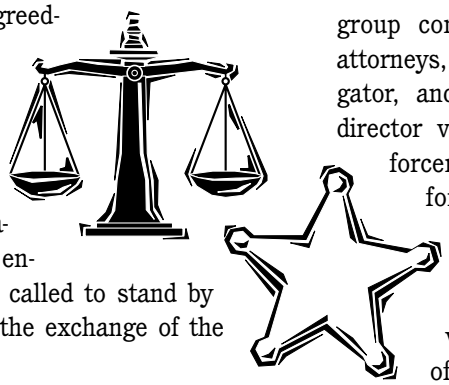
Continued from page 1

Dodd and Family Court Services Director Lou Dawson met to discuss both agencies' problems and to determine how this issue could be addressed. Because Family Court Services is not an enforcement agency, parents were calling law enforcement to enforce their custody/visitation orders and to supervise visitation exchanges. The local law enforcement agencies did not have the staff to respond to the many telephone calls from parents needing assistance.

Family Court Services contacted the presiding family law judge and the Family Law Advisory Subcommittee, which consists of local family law attorneys and representatives from the district attorney's office. A joint meeting was scheduled with the Fresno Police Department to obtain additional information. In late July 1998 Family Court Services scheduled meetings with all law enforcement agencies, which took place every other week in the beginning.

Law enforcement agencies such as the Fresno Police Department, the Fresno County Sheriff's Department, the Clovis Police Department, the district attorney's office, and other outlying police agencies met and formed a task force. The task force learned that most of the law enforcement agencies in Fresno County had different procedures for reporting violations of child custody orders and other court orders. Attorneys and investigators had the impression that most of the reports they received were for minor violations. It was also learned that during the period from July 1997 to June 1998, the Fresno Police Department had responded to more than 2,300 calls for service on violations of child custody court orders and for assistance with child custody exchanges. Of the 2,300 calls for service, 1,400 generated police reports that were filed with the district attorney's office, and less than 10 percent of the reports were prosecuted. The police department's telephone unit was overwhelmed.

Since all law enforcement agencies were affected by phone calls requesting assistance in child custody/visitation matters, all agreed that options needed to be explored for addressing this ongoing county problem. The task force discussed the questions and needs that each agency brought to the table. At that time, only one agency that offered supervised exchange services, the Child Custody Program (CCP), was open seven days a week and on holidays. The CCP coordinator met with the task force and offered CCP's assistance with the situation. The task force began working on a possible standing order that would allow law enforcement to refer people to CCP, or any other agreed-upon agency that provides supervised exchange services, after two or more occasions when law enforcement was called to stand by to assist with the exchange of the children.



In August 1998 the task force approached the presiding judge of the Superior Court of Fresno County about the possibility of a standing court order for supervised exchanges. The presiding judge considered statistics, viable community agencies, justification for the standing order, and the support of all law enforcement agencies (including the district attorney's office).

In August 1998 the following paragraph was signed by the judge and adopted as a standing order. This paragraph was incorporated into Family Court Services' recommendation worksheet.

> In the event that law enforcement officers are called to stand by to assist with the exchange of the child(ren) on two (2) or more occasions, law enforcement shall refer the matter of visitation exchange to Child Custody Program (CCP) or any other agreed upon agency which provides supervised exchange services. CCP is located at 350 North Van Ness Avenue in Fresno (559-268-4227). The cost for CCP shall be shared equally between the parents. The court shall reserve jurisdiction to apportion the cost according to proof. The visitation exchanges shall be under the direction of the agency, to include appointment dates, times, and conditions of visitation exchanges.

TRAINING OF LAW ENFORCEMENT REGARDING FAMILY LAW ISSUES

Another concern addressed by the task force was that all law enforcement agencies interpreted child custody/visitation orders differently and therefore had different procedures for addressing child custody/visitation issues. A small group consisting of two family law attorneys, one district attorney investigator, and the family court services director volunteered to train law enforcement officers. The law enforcement agencies had just added a section on family law to their officers' training curriculum. The training—which ranged from definition of terms to reading and interpreting a child custody/visitation court order—was well received and praised by the officers. There were many questions and much discussion as a result.

Additional information can be requested at historictownie@aol.com.

Lourdes (Lou) Dawson conducted her undergraduate and graduate studies in criminology at Fresno State University. Ms. Dawson's postgraduate studies in counseling and psychology were completed at the University of California at Berkeley and Fresno State University. Ms. Dawson began as a domestic relations investigator at Family Court Services in Fresno in January 1974. Domestic relations investigators were reclassified as marriage and family counselors in 1975. Family Court Services was under the probation department until January 1999, when the division became part of the superior court.

Conferences Offer Law Education

Continued from page 1

visitation modification, child support, and spousal support.

"Wisdom in Practice: Service to Families, Children, and the Courts" is the theme of CFCC's 15th annual Statewide Educational Institute. The institute, which is sponsored by the Judicial Council and the Administrative Office of the Courts, is expected to attract 400 attendees representing family court programs throughout the state.

More than 20 workshops and plenary sessions will feature statewide and national experts speaking on such topics as the impacts of divorce on children, resiliency, alienation, guardianship investigation, domestic violence, substance abuse, child custody evaluation, and implementation of new legislation.

CFCC Director's Corner

With more than 20 years' experience with mandatory custody mediation in California behind us, we now have the opportunity to consider the role and value of the diverse family court services and programs in California's family and juvenile courts. Originally, these programs primarily provided mediation and evaluation or investigative services to parents who were in dispute over the custody or visitation arrangements for their children; today, many programs offer a range of services from parent education and orientation to dependency mediation and probate investigation. More than 90,000 child custody mediations are conducted annually, and over 6,000 child custody evaluations are carried out by court-based professionals to help families and courts develop child-centered parenting plans. These numbers represent a wide of range of families who may benefit from assistance that combines the institutional formality and accessibility of a court connection with processes devised to give parents more resources for nurturing their children in the face of conflicts and other challenges.

Family court services programs face their own challenges, as well. Program staff may find themselves having to balance the court's need for obtaining information with the family's need for limited court intervention. These are often complex cases for which the court may not have the ability to offer long-term solutions, yet family court services staffs become keenly aware of the pressing needs many families present. Our diverse and changing population, new legislation, and ongoing research continually give program staffs opportunities to reconsider how to work most effectively with families. Yet these opportunities bring their own additional challenges—for family court services and for the courts generally.

I want to acknowledge the hard work being done in courts on behalf of families and children and suggest that, as the Statewide Family Court Services Institute theme suggests, much wisdom is applied to family court practices throughout the state. We at CFCC look forward to continuing to working collaboratively with you on the varied issues facing courts and families and to building on your experiences as we develop increasingly effective and creative responses.

CFCC GENERAL NUMBERS:
415-865-7739, 865-7741

CFCC FAX NUMBERS:
415-865-7217, 865-4399

Coming Soon

THE 2001–2002 ACCESS TO VISITATION REQUEST FOR PROPOSALS

Subject to the availability of federal funding, California's Access to Visitation Grant Program will begin its fifth year of operation in October 2001. The request for proposals (RFP) grant applications will be sent to each jurisdiction in late April 2001. Grant funds are limited to three types of programs: supervised visitation and exchange services, education about protecting children during family disruption, and group counseling.

Funding for states' noncustodial access to visitation programs is provided by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104-193, 100 Stat. 2258), title III, subtitle I—Enhancing Responsibility and Opportunity for Non-Residential Parents, section 469B in the Social Security Act. The goal of the access to visitation programs is to increase nonresidential parents' access to their children while ensuring the health, safety, and welfare of the children.

The Access to Visitation Grant Program is administered through the Judicial Council's Center for Families, Children & the Courts. Funding awarded to administrative courts will be selected through a competitive process set forth by statute and approved by the Judicial Council's Family and Juvenile Law Advisory Committee and Executive and Planning Committee.

All family courts in California are encouraged to apply. For additional information regarding the Access to Visitation Grant Program, you may contact Shelly Danridge, Acting Access to Visitation Coordinator, at 415-865-7741.

This article is reprinted with permission from the **Association of Family and Conciliation Courts (AFCC) Newsletter.** *The AFCC is an association of family court and community professionals.*

Conversation Corner

WITH JOAN KELLY, PH.D.

Joan Kelly, Ph.D., is well known to AFCC members for her expertise in the area of children and divorce. For more than 30 years she has studied mediation and the impact of divorce on children's adjustment. Dr. Kelly has published more than 60 articles, including numerous contributions to the *Family and Conciliation Courts Review;* has served on several editorial and advisory boards; and was a founding board member and president of the Academy of Family Mediators. She has received AFCC's Stanley Cohen Distinguished Research Award, the Joseph W. Drown Memorial Award in Recognition of Outstanding Services to Children from the AFCC California Chapter, and the Distinguished Mediator Award from the Academy of Family Mediators. Dr. Kelly is a fellow of the American Psychological Association.

Born and raised outside of Pittsburgh, Dr. Kelly attended Bucknell University in Lewisburg, Pennsylvania, and earned an M.S. in child development and a Ph.D. in clinical psychology at Yale University. She then accepted a teaching position at the University of Michigan, where she met her husband, James, also a Yale graduate, who was completing an internship in medicine. They relocated to California, where they have remained ever since. Dr. Kelly and her husband have two children. Andy is a graduate student at the Kellogg School of Management at Northwestern University, and Sarah is working toward her doctorate in American Art History at Columbia University. Andy and Sarah are also Yale graduates.

***AFCC**: You have been studying the effects of divorce on children over a 30-year period. What do we know now that we didn't know in 1969?*

***Joan Kelly**:* From 1970 until 1990, the tendency was for everyone to blame all of children's problems on the divorce. What we now understand, as a result of much better research, is that marital conflict is responsible for a great deal more of the adjustment problems of children of divorced parents than we used to believe. The symptoms we have seen in children of divorce over the years are the same as those we now observe in children with married parents who are experiencing a high level of conflict.

***AFCC**: Does that mean that if there were no divorces we would see the same types of problems in children of married parents?*

***JK**:* Yes. Until the late 1980s we were not studying children in the married family. But when research began comparing children of married parents with those of divorced parents and examining a multiplicity of variables, we learned that within married families there are enormous variations with children's adjustment. The central variables that account for the differences within both married and divorced families are the levels of conflict, violence, and the mental health of the mother. If you look at the research, the divorced parents' children have more behavioral and academic problems than children whose parents are married; the differences between the two groups are really quite small and they have been narrowing in recent years.

***AFCC**: Why do you think the gap is narrowing?*

***JK**:* One reason is that we have improved our measures and methodologies. Our society is also quite different now. Divorce no longer has the stigma it once did. There are more support systems, educational programs, and information available for divorcing parents. Our community is simply less hostile to divorcing families. Among researchers,

Continued on page 5

Conversation Corner

Continued from page 4

the prevailing view of children of divorce is that they can be characterized as resilient and that they experience pain, but not necessarily that they are pathological. Most well-designed studies show that by their early thirties there is no difference between young adults whose parents were divorced and those whose parents stayed married.

***AFCC**: What does all of this say about the efforts related to covenant marriage laws, the pro-marriage movement, and groups like Divorce Busters?*

***JK**:* Dr. Paul Amato's research found that 10- to 12-year-old children of high-conflict marriages had significantly more behavioral problems 10 years later than a comparison group whose high-conflict parents were divorced. But there are risks for children of divorce, especially adolescents, which are related not to divorce per se but to related factors such as lower levels of parental monitoring, reduced economic opportunities, and the reduced input of one parent. The kids who are in the best shape are those whose parents have low levels of conflict and stay married. Divorces in that group cause the most problems for youngsters probably because, unlike the children of high-conflict families, these kids had nothing to gain by their parents' divorcing. The problem is that none of these movements or political factions makes the distinction between children of parents in destructive marriages and children of parents in nondestructive marriages.

***AFCC**: What is the impact of all of this information?*

***JK**:* It has really challenged our thinking about children of divorce and about divorce in general. More than half of the children are well adjusted. Unfortunately, the media and others have focused on the small number of kids who have serious problems. As for researchers, rather than focusing on divorce, we now look for the conditions that create problems and those that accelerate improvement in child development.

***AFCC**: There has been quite a focus on the role of fathers lately. What does the research indicate?*

***JK**:* We've come full circle on fathers since the 1970s. Back then we said that frequent contact with fathers was associated with better child adjustment following divorce. In the 1980s, several influential studies reported that there was no relationship between father contact and child adjustment. This was quite troubling for many clinicians. But in the 1990s—in fact, in the last two years—there have been studies that demonstrate a significant relationship between a father's postdivorce involvement with his children and their positive adjustment. This occurs if the father's involvement is characterized as emotionally supportive and "active parenting"—meaning discipline, problem solving, and appropriate parenting behaviors. After divorce, fathers often drift away from active parenting because they have minimal time with their kids. One very interesting finding from a national study is that when dads are more actively involved with their children's school, the children do better academically, are less likely to be suspended or expelled, and like school better.

***AFCC**: Where does AFCC fit in for you and the work that you do?*

***JK**:* AFCC really fosters an interdisciplinary approach to complex problems, and that is absolutely necessary, particularly when dealing with people when there is violence, parenting deficiencies, or substance abuse. Hearing different ideas and approaches is extremely informative and fosters a collaborative approach. For my own work it has been wonderful because it has provided a thoughtful forum to talk about children of divorce, mediation, the alienated child, child development, and other challenges. AFCC has also created wonderful opportunities for me. After speaking at conferences, I've received invitations to do training in courts and communities around the world, which makes it possible for me to share information beyond the meetings and conferences in which we participate.

For more information, contact the AFCC at 6515 Grand Teton Plaza, Suite 210, Madison, Wisconsin 53719-1048; fax: 608-664-3751; phone: 608-664-3750; Web site: *www.afccnet.org;* e-mail: afcc@afccnet.org.

Editor's Note

WELCOME

to the March 2001 Issue of *Update*, the Center for Families, Children & the Courts (CFCC) newsletter. The newsletter focuses on court and court-related issues involving children, youth, and families. We hope you find this issue informative and stimulating. As always, we wish to hear from you. Please feel free to contact CFCC about the events and issues that interest you.

We invite your queries, comments, articles, and news.

Direct correspondence to Beth Kassiola, Editor, at the e-mail address below.

Center for Families, Children & the Courts

Update

is a publication of the Judicial Council of California, Administrative Office of the Courts, 455 Golden Gate Avenue, San Francisco, CA 94102-3660.

Phone: 415-865-7739

E-mail: cfcc@jud.ca.gov

PLEASE VISIT OUR WEB SITE AT

www.courtinfo.ca.gov/programs

CalSWEC and the Regional Child Welfare Training Academies Work Toward a Standardized Core Curriculum for Child Welfare Workers

Barrett Johnson, LCSW

The California Social Work Education Center (CalSWEC) will pilot a new standardized core curriculum for child welfare workers in spring 2001. The curriculum, which is the result of a multiyear statewide collaborative effort, is designed to provide each new child welfare worker in California with a comprehensive, competency-based training before he or she assumes an independent caseload.

Development of the Standardized Core Curriculum Project (SCCP) has also provided a model for collaboration between the various stakeholders in the child welfare system. The SCCP paves the way for additional training projects involving the legal community, social work agencies, and university-based training academies.

HISTORY OF THE PROJECT

The SCCP began with the passage of Assembly Bill 2779 in 1998. Sponsored by Assembly Member Dion Aroner, AB 2779 appropriated General Fund dollars to develop a standardized training curriculum for child welfare workers. New workers were to complete the training prior to carrying an independent caseload. The bill also required the new curriculum to build upon existing curricula and stipulated that it must be a collaborative effort among the County Welfare Directors Association (CWDA), CalSWEC, the regional training academies (see box below), and the California Department of Social Services (CDSS).

CalSWEC convened the Standardized Core Curriculum Advisory Committee in August 1999. The committee consists of representatives from CDSS, CalSWEC, CWDA, the regional training academies, the Judicial Council, county child welfare training management, child welfare supervisory and line staff, child welfare consumers, foster parents, and labor unions.

Throughout 1999 and 2000, the advisory committee gathered and synthesized

Continued on page 7

ABOUT CALSWEC AND THE REGIONAL TRAINING ACADEMIES

CalSWEC was formed in 1990 as a unique partnership among California's schools of social work, public human service agencies, and other professional organizations. It is part of the University of California at Berkeley School of Social Welfare. CalSWEC's mission is to facilitate the integration of social work education, practice, and values to ensure effective, culturally competent service delivery and leadership to alleviate negative human conditions, such as racism and poverty, for the people of California. Sherrill Clark, Ph.D., CalSWEC's executive director, oversees a full-time staff of 12.

The Regional Training Academy Coordination Project is a statewide collaborative vehicle for in-service training and continuing professional education of public child welfare agency staff. Five regional training academies—each one a collaboration of the region's social service agencies and academic communities—provide a continuum of training and professional education. This coordinated delivery model reduces duplication of training, increases consistency, promotes professionalism and competency, and supports child welfare staff retention in California's 58 counties. The Regional Training Academy Coordination Project is funded by CDSS via federal Title IV-E training funds.

CalSWEC manages and subcontracts with three of the regional academies: the Bay Area Academy at San Francisco State University, the Central California Child Welfare Training Academy at California State University at Fresno, and the Public Child Welfare Training Academy—Southern Region at San Diego State University. The two other academies, which collaborate with CalSWEC, are the Northern California Children & Family Services Training Academy at UC Davis Extension and the Inter-University Consortium at four universities in Los Angeles County.

The Regional Training Academy Coordination Project staff includes Chris Mathias, Regional Training Academy Coordinator; Barrett Johnson, Training and In-Service Specialist; Marsha Carlson, Curriculum and Evaluation Specialist; and Terry Jackson, Administrative Assistant. For more information, contact CalSWEC at 510-642-9272, or visit CalSWEC's Web site at *http://calswec.berkeley.edu.*

Standardized Core Curriculum
Continued from page 6

information about existing and needed training throughout the state, producing a comprehensive outline that identified the areas of child welfare practice that needed to be covered in a standardized curriculum. Once the outline was developed, a smaller team, the Standardized Core Curriculum Work Group, began developing the curriculum and devising a comprehensive evaluation plan for the pilot programs.

THE CURRICULUM PRODUCT

The result is a comprehensive and flexible curriculum that covers eight major content areas: primary child welfare skills, social work skills, human behavior, workplace management, legal processes, cultural competence, social work values and ethics, and interdisciplinary practice. The latter three are also considered "thematic content areas" that will be woven into the other content areas.

THE DELIVERY MODEL

The new standardized core curriculum offers an innovative delivery model that will integrate classroom study and on-the-job training. Supervisors of new workers will attend a daylong retreat prior to the beginning of the training. Supervisors will also be provided with a "Training Cookbook" that outlines methods of teaching trainees while the trainees are on the job. In addition, trainees will carry "training passports" with them between classroom and on-the-job sessions. The passports will link the classroom training to the on-the-job training by allowing the trainers and supervisors to communicate with each other about on-the-job assignments completed by the trainee.

CURRICULUM EVALUATION

The pilot programs will be evaluated to determine trainees' satisfaction as well as the effectiveness of the training in improving child welfare workers' knowledge, skills, and attitudes. The evaluation will also gather data about satisfaction, knowledge, and skill improvement for child welfare workers with varying levels of experience and training. This will help refine future training sessions to determine which areas of training are required for different types of workers (for example, workers with M.S.W. degrees versus workers with other levels and types of professional training).

BENEFITS OF STANDARDIZATION

The standardized core curriculum offers numerous benefits to California's child welfare system. It will provide more comprehensive, coordinated training and more assurance of the skill levels of newly trained workers. It will assist in recruitment and retention of new workers, since trainees and supervisors will be better equipped to provide comprehensive on-the-job training. A full implementation of the standardized core curriculum is also expected to reduce costs, by streamlining cross-county transfers of staff. Perhaps most significantly, the SCCP has strengthened relationships between the legal, educational, and social work communities.

For more information about the SCCP, please contact Barrett Johnson, Training and In-Service Specialist, CalSWEC, at 510-643-5484, e-mail barrettj@uclink.berkeley.edu; or Marsha Carlson, Curriculum and Evaluation Specialist, CalSWEC, at 510-643-6400, e-mail carlsonm@uclink.berkeley.edu.

Barrett Johnson, LCSW, is training and in-service specialist at CalSWEC. He has more than 12 years of experience working in a variety of capacities with urban children and families. Prior to joining CalSWEC, he was a child welfare worker at the Sexual Trauma Unit of the City and County of San Francisco's Department of Human Services. Mr. Johnson also has a private psychotherapy practice in San Francisco.

GETTING TO KNOW CFCC STAFF

Did You Know?

Isolina Ricci, Ph.D., Assistant Director of the Center for Families, Children & the Courts, spent the month of February as a resident fellow at the Rockefeller Foundation's Bellagio Center in Italy. She was invited there to work on her monograph, "Learning From 20 Years of Statewide Mandatory Mediation in California's Family Courts: A Guide for Decision-Makers." Resident fellows work and live together during a month-long period in a gracious villa on Lake Como, a locale highly conducive to productivity and collaboration. While each fellow has his or her individual project, mealtimes and evening discussions are reserved for discussions and project presentations by the full group.

The Bellagio Center residency is highly selective and is sought after by scholars, writers, artists, and policymakers. Each year approximately 140 residents are chosen on a competitive basis from around the world. Residents are selected by external evaluators and foundation officers. Decisions are based on the quality of the individual or team project or conference proposed, the importance of the proposed work to development and innovation in its field and discipline, the competence of the applicants, and the suitability of the Bellagio Center for the proposed activity. Last year's residents from the United States included Marian Wright Edelman, President of the Children's Defense Fund, and Henry Steiner, Harvard Law School's Director of the Human Rights Program.

After Dr. Ricci has completed her monograph, it will be published in the *Journal of the Center for Families, Children & the Courts*.

Regional Conferences to Develop Action Plans to Assist Self-Represented Litigants in California

The Center for Families, Children & the Courts will conduct four regional conferences this spring to help courts assist the growing number of self-represented litigants in California. More than 60 percent of the litigants in family law matters are representing themselves in their cases, and statistics for other civil matters also indicate a growing number of self-represented litigants. This poses unique challenges for the courts.

The two-day conferences will take place on:

March 15–16 in Visalia
April 5–6 in San Francisco
April 20–21 in Chico
April 26–27 in Costa Mesa

Chief Justice Ronald M. George has asked each presiding judge to appoint a team composed of a court executive, a judge, a private bar representative, a legal service attorney, a family law facilitator, a small claims advisor, a law librarian, and other interested court and community persons, which will attend the conference in that court's region. The team will develop an action plan for serving self-represented litigants in its county.

Participants will hear from representatives of programs in their region as well as from national experts about existing self-help programs in areas such as family law, landlord-tenant law, and other civil matters. They will learn about ongoing partnerships of courts and their communities to develop more comprehensive and effective services for litigants without lawyers.

Fifteen workshops will be offered on topics such as:

- Judicial ethics and self-represented litigants
- Clerk ethics and training
- Unbundling of legal services
- Evaluation of self-help programs
- Technological resources for self-represented litigants
- Effective judicial communication with self-represented litigants
- Partnerships with community and legal services agencies
- Making the courthouse more accessible to self-represented litigants
- Providing self-help services to non-English-speaking litigants
- Developing resources for the courtroom
- Providing guardianship services to self-represented litigants
- Providing general civil services to self-represented litigants
- The use of ADR for self-represented litigants
- Securing funding for self-represented litigant projects
- Expanding family law services

For more information, please contact Bonnie Hough at 415-865-7668 or Christine Copeland at 415-865-4225.

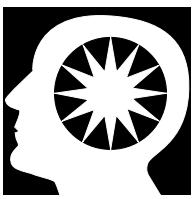
Annual Educational Training Institutes

SPONSORED BY THE CENTER FOR FAMILIES, CHILDREN & THE COURTS

REGIONAL CONFERENCES TO DEVELOP ACTION PLANS TO ASSIST SELF-REPRESENTED LITIGANTS IN CALIFORNIA
March 15–16, Visalia
April 5–6, San Francisco
April 20–21, Chico
April 26–27, Costa Mesa

CHILD SUPPORT COMMISSIONERS' TRAINING IN CONJUNCTION WITH CJER'S FAMILY LAW AND PROCEDURE INSTITUTE
March 21–24
Hilton Hotel, Costa Mesa

FAMILY COURT SERVICES ANNUAL STATEWIDE EDUCATIONAL INSTITUTE IN CONJUNCTION WITH CJER'S FAMILY LAW AND PROCEDURE INSTITUTE
March 22–24
Hilton Hotel, Costa Mesa



FAMILY VIOLENCE AND THE COURTS CONFERENCE
May 17–19
Sheraton Gateway LAX, Los Angeles

FIFTH ANNUAL AB 1058 TRAINING
September 19–22
Sheraton Hotel, San Diego

BEYOND THE BENCH XIII
December 5–7
Hyatt Regency, Monterey

FOR ADDITIONAL INFORMATION ON DATES AND LOCATIONS, PLEASE CALL 415-865-7741 OR 865-7739

Court Approval Required for Foster Children's Psychotropic Medications

Fran Edelstein, Ph.D., California Alliance of Child and Family Services

Senate Bill 543 (Bowen) was signed into law in September 1999. This bill, which became effective January 1, 2000, states that, "if a child is a dependent of the juvenile court and taken from the physical custody of the parent, only a juvenile court judicial officer shall have the authority to make orders regarding the administration of psychotropic medications for that child, except that the court may issue a specific order delegating this authority to a parent. . . ."

In other words, *all foster children in placement must now have all new prescriptions for psychotropic medications approved and authorized by the juvenile court before the medications are given to the child, unless the child's parent has a specific order granting him or her authority to approve and authorize these medications.*

RULES AND FORMS

SB 543 also requires the Judicial Council to "adopt rules of court and develop appropriate forms for these purposes on or before July 1, 2000." The rules and forms were just approved by the council for distribution to all juvenile courts in California. They became effective January 1, 2001.

California Alliance of Child and Family Services (CACFS) staff worked actively with staff members of the Administrative Office of the Courts to create a reasonable and manageable set of rules and forms. The goals were to minimize unnecessary bureaucracy and paperwork and to facilitate quick and responsible approval of medication for foster children in need of this mental health treatment intervention.

Highlights of the new rules and forms are as follows:

1. An application for authorization for psychotropic medication must be completed and presented to the juvenile court for approval. The application developed by the Judicial Council is form JV-220.
2. The application includes information such as the child's diagnosis, the specific medication recommended, the anticipated benefits and possible side effects, other treatment plans for the child that are relevant to the medication regimen, and a statement that the child and the child's parent (if possible) have been informed.
3. Although form JV-220 is extensive, it does not have to be completed or signed by the physician. Someone else such as the agency or county social worker, using information provided by the physician, may complete the form. The physician may review the form, but it is not required.
4. For several sections of the form, information that already exists in writing, such as medical history, drug interactions, or common side effects, may be attached rather then rewritten each time the form is completed.
5. The attorneys of record must be notified before the application form is submitted to the court. The new rules of court include a procedure to follow in opposing a request.
6. If requested, the court may authorize the parent to approve or deny the administration of psychotropic medication. This order must be based on the finding that (1) the parent poses no danger to the child, (2) the parent has the capacity to understand the request and the information provided, and (3) the parent has the capacity to authorize medications in the best interest of the child.
7. Each authorization is in effect for 180 days or less.
8. In emergencies, medications may be administered with or without court authorization. Emergencies are defined in Welfare and Institutions Code section 369.
9. County protocols and forms that are consistent with the rules may be submitted to the council for approval for use in place of the Judicial Council rules and forms.
10. Local courts may extend these rules to include children who have been declared wards of the court under Welfare and Institutions Code sections 601 and 602.

ADDITIONAL INFORMATION

The following information, which is not in the rules, may be helpful to member agencies as they work with local juvenile courts to implement these rules.

1. The new rules address a child's need for psychotropic medication that arises after the child has been declared a dependent. They do not apply to medications that were prescribed before the court took jurisdiction. Physicians will probably want to submit an application to the court for those medications, too, but they need not be stopped while authorization is sought.
2. The authorization, including the specific medication and the approved dosage range, is transferable to other physicians, including inpatient physicians, who care for the child during the period the authorization is in effect, regardless of whether the original physician is still providing care for the child.

Continued on page 10

Psychotropic Medications
Continued from page 9

3. When a child is hospitalized, existing medication authorizations are transferable as described above. The physician can begin new medications or exceed the authorized dosage range without a new authorization if, based on the physician's assessment and guidelines in Welfare and Institutions Code Section 369, an emergency exists.

EACH COUNTY'S JUVENILE COURT HAS FINAL SAY

Finally, it is important to remember that each county's juvenile court, probably in collaboration with its placing agencies, will decide whether to implement these rules or submit its own procedure. When the Judicial Council's rules are implemented, interpretation of the rules may result in different procedures in each county. Therefore, it is important to check with a child's placing agency and/or juvenile court before submitting a psychotropic medication request.

Fran Edelstein, Ph.D., is a licensed psychologist with experience in mental health treatment, administration, and public policy. She currently consults on public policy issues for the California Alliance of Child and Family Services, a statewide association of private nonprofit agencies that provide a broad range of services for abused, neglected, and special-needs children and their families.

Implementation of Standard of Judicial Administration 24(h)

Hon. Sherri Sobel
Referee of the Superior Court of Los Angeles County

New provisions of section 24(h) of the California Standards of Judicial Administration require that the bench become conversant and more proactive with the laws regarding special education. The underlying federal legislation is the Individuals With Disabilities Education Act (IDEA) and the Rehabilitation Act of 1973, section 504. Some understanding of the acts and their provisions is important to the bench, but most of the orders can be requested and the process put in place with a modest amount of new information. The most important function of the courts is to gather and disseminate information for use in the schools. The court can also order the social services department to assist with a child's needs and assist a parent in learning how to use the special education system to help the child. Following is a primer on the law and process that would bring special education to the courtroom.

The IDEA directs the system that provides for those children designated as eligible for special education services. Eligibility is determined according to a series of criteria set out in the regulations accompanying the act. The child's strengths and weaknesses are assessed, and when the assessment is complete, parents, teachers, and school personnel meet to address the specific needs of the child. For an eligible child, the Individual Education Program (IEP) sets out goals, school placement, and any necessary related services designed to assist the child to learn. These services may include but are not limited to speech therapy and counseling. The IEP is prepared and signed by all present. It is important that this document be complete; any services not on the IEP are not legally required of the school system. The services set out in the IEP are available from birth through age 22 or high school graduation, whichever comes first.

"Section 504" refers to the section of the Rehabilitation Act that is designed to provide relief by accommodation for a person having difficulty with a "major life experience." For example, children with attention deficit disorder may need accommodation to be fully mainstreamed but are not necessarily eligible for special education. The school district must also provide educational services to these children, although not necessarily through an IEP, throughout their school attendance.

The court's involvement begins with the initial hearing, at which time the court begins to educate itself about the child. The department is to gather information, and the social worker is ordered to collect all educational information. Is there an IEP already in place? If so, the removal of the child to a relative's home or foster home should trigger a social worker's request for a 30-day administrative placement in the new school. After 30 days, the school may initiate a new IEP if it believes the current IEP is not appropriate. The implementation of the IEP at the child's new school is step one in making sure of a smooth transition for the child.

If there is no IEP in place, the court should order all school reports for the

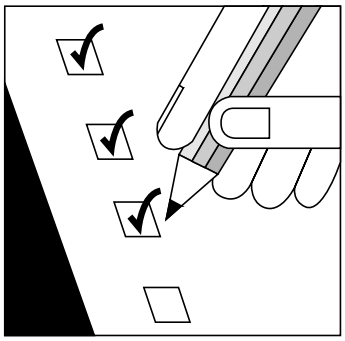
Continued on page 11

Section 24(h)

Continued from page 10

jurisdictional hearing. If the child is attending school but failing, the court should order the social worker to assist the parent in requesting an assessment for special education services. The request must be in writing; therefore, it is important to have an assessment request form that is easy to read and understand in the courtroom.

Once the request has been made, the federal timeline starts. The court should be aware of both state and federal timelines and monitor them. The school is required to show an assessment form to a parent within 15 days of the request. The school has 50 days from the day of the signature to complete the assessment and schedule an IEP meeting.



The court may not order an IEP. If juvenile court disposition has not taken place by the time of the IEP meeting, the parent still has the right to attend the meeting and sign the IEP. If juvenile court disposition has taken place, the court has had some say as to the appropriate person to sign for the parent. At the dispositional hearing, pursuant to Welfare and Institutions Code section 362, the court must make a decision regarding a parent's educational rights. The court must affirmatively remove those rights if the parent either is gone or is unavailable because of the court's belief that the parent is not the proper person to direct the child's education at that time due to risk or detriment. It is important not to remove parental rights unless the parent either is absolutely unavailable (because of current drug usage, absence, or incarceration) or poses an immediate danger to the child's well-being.

The removal of a parent's right to make educational decisions moves the parent one more step away from his or her child. If the court does not remove rights, and the child is with a relative, the parent may designate a relative to attend the IEP and sign, without removing rights, under the new definition of "parent" as set forth in the IDEA. If rights are removed, the *school* must be informed so that it can designate an educational surrogate to advocate for the child. The court *may not appoint a surrogate.* Forms for the purpose of informing the school of court orders regarding education rights should be in the courtroom and should be made part of a disposition case plan. One copy should be in the file, one should go to minor's counsel, and one should be provided to the school by the social worker. This keeps the child's educational rights ongoing.

At all hearings thereafter, a copy of the IEP can be requested at any time by the department or the parent or surrogate if the court or a party believes that the child is still not getting an appropriate education.

If the child is in a permanent plan that does not include return to a parent, Welfare and Institutions Code 366.27 allows the court to designate the relative with whom the child is placed as the person in charge of all medical and educational needs. If the parent has retained educational rights through reunification, this is the time to limit those rights. If the child is not with a relative, a surrogate must be in place unless there is a legal guardianship or an adoptive parent.

The last important vehicle that the bench has for ensuring educational rights is the use of joinder to order services that should be provided by the schools and are not being provided. The use of joinder needs to be very judicious. Eligibility of services is determined by administrative hearings outside the purview of juvenile court. In a sophisticated court system, attorneys, or advocates are available to assist with these hearings. Otherwise, the court may join those agencies only after the IEP is determined, and only as to the services listed on the program. It is very important that every need of the child be included on the IEP. Any oral agreement by the school to provide services is not enforceable.

In some cases, eligibility for special education services with appropriate placement and provision of related services may obviate the need for court jurisdiction.

Section 24(h) is a start for our courts. It is important for court to be conversant with the use of mental health and regional center services, but a working knowledge of special education rights and responsibilities will go a long way toward helping our children reach their potential in our system.

Hon. Sherri Sobel was sworn in to the bar in 1983. Her entire legal career has been spent as counsel for children and family issues. She served as a panel attorney in juvenile court in San Diego and at the San Diego Alternate Public Defender's Office. She has represented children in special education cases since 1983. Prior to taking the bench in Los Angeles in 1998, Referee Sobel was a state mediator for special education.

The Peer Assessment and Compliance Review (PACR) Project

COVERING ALL CORNERS OF CALIFORNIA

Lee Ann Huang, Senior Analyst, Berkeley Policy Associates

We have traveled far and wide across California, visiting large, small, urban, and rural Court Appointed Special Advocate (CASA) programs. We have stayed in more Best Western motels than we imagined existed, and eaten at more diners serving "home-style" food than we ever thought possible. We have seen the beautiful mountains of Siskiyou County, the mysterious desert of Imperial County, and the serene flatness of Kern County. In total, we have visited 13 CASA programs in California and have gained valuable insight into each program's accomplishments, innovative strategies, technical assistance needs, and compliance with rule 1424 of the California Rules of Court.

Left to right: Lee Ann Huang, BPA; Wendy Most, Executive Director of San Luis Obispo County CASA; Beth Kassiola and Stephanie Leonard, CFCC. Photo: Elaine Sparks, Case Manager, Siskiyou County CASA

"We" refers to the independent evaluation team that visits CASA programs as a part of the Peer Assessment and Compliance Review (PACR) project. Each evaluation team includes an evaluation expert from Berkeley Policy Associates (BPA); Stephanie Leonard, the Judicial Council CASA grants analyst; a Judicial Council attorney (Beth Kassiola or Regina Deihl); and a CASA program executive director from another county. BPA is a California-based social policy research firm that has been involved in the PACR project virtually from the beginning. We currently have three staff members working on the PACR project, and I have been a part of the process since the first California CASA Association (CalCASA) meeting at Asilomar in 1999. Since that time, the PACR project has proven to be an interesting, productive, and often humorous journey for those involved.

In 1999 CalCASA, a nonprofit charitable organization that supports and advocates for local CASA programs throughout California, created the PACR project in partnership with the Judicial Council. PACR is designed to strengthen and support local CASA program efforts and is divided into two components: self-assessment by local CASA programs regarding compliance with rule 1424 and a field study of local CASA programs by the aforementioned independent evaluation team. The four-person team spends approximately two days at each CASA program, interviewing a variety of individuals in the dependency court system, including CASA staff and volunteers, child protective services staff, judicial officers, attorneys, foster parents, former foster youth, board of directors members, and staff from relevant community organizations.

For over 20 years, the CASA programs in California have been assisting children who are subject to court proceedings due to abuse, neglect, or abandonment. Once a child comes under the protection of the state's child welfare system, CASAs are responsible for advocating on the child's behalf. There are now 35 local CASA programs providing services in 37 of California's 58 counties. In 1999 more than 3,500 CASA volunteers in California donated over 500,000 hours to support nearly 7,200 children.

It is our duty, as a part of the PACR project, to learn how each CASA program operates and to grasp both its successes and its needs for more support or training. After each visit, a report on the findings is given to the program's executive director, the Judicial Council, and CalCASA. Our hope is that the report will be used for three basic purposes: (1) to help the program identify challenges so that it can change its policies or procedures or obtain necessary training and technical assistance; (2) to provide much-needed affirmation of a

Continued on page 13

PACR Project

Continued from page 12

program's accomplishments; and (3) to solicit additional funding. Furthermore, CalCASA is using the information to design technical assistance strategies for programs across the state that address some of the common challenges being faced.

As mentioned, we have visited 13 CASA programs thus far. Several themes of these visits warrant mention. We have found that, by and large, CASA program staff and volunteers are of exceptionally high quality. The individuals interviewed believe that the high caliber of staff and volunteers is the single most important reason that CASA programs have such positive impacts on children's and families' lives. A second important finding is that respondents truly believe CASAs have significant effects not only on the lives of individual children and their families but on the entire dependency system in that community. Because of CASAs, the information the court receives is improved, children receive necessary services in a timelier manner, and children's safety and well-being are increased. Furthermore, the individuals interviewed in virtually every CASA program visited thus far have expressed the belief that CASA volunteers are well trained for their duties and that this training enables them to be irreplaceable contributors to the dependency system.

Although the PACR project is not designed to measure the impacts of CASAs on children and families, it has generated a structured discussion on the data collection capacity of CASA programs as well as on potential measures of outcomes. We have found that CASA programs in general are very open to collecting data. Furthermore, although there is diversity in the types of outcomes respondents would like measured, there is openness to the idea of quantitative outcome measurement.

We still have 22 CASA programs to visit, and we look forward to each one. We have been given the opportunity to visit some of the most interesting, beautiful, and unique locations in California. I, for one, will always remember the snowy trees in Yreka; the Mexican food in El Centro; getting lost over and over in downtown Bakersfield; spending "quality time" with the other team members in countless McDonald's, gas stations, and motel diners; and Valentine's Day at Grandma's House restaurant. More importantly, we have been given the opportunity to visit a set of programs that are functioning with extremely limited resources on behalf of the most vulnerable children in our society. They appear to be doing an awesome job.

Lee Ann Huang is a senior analyst at Berkeley Policy Associates, a social policy research firm in Oakland. She has a master's degree in public policy from the University of Chicago, with concentrations in child/family policy and social program evaluation. At BPA, she directs the PACR project and is involved in several other evaluations of family resource programs, welfare reform efforts, and child care.

Delinquency Conference Focuses Attention on Local Action

Thomas C. Edwards, Judge of the Superior Court of Santa Clara County
Audrey Evje, CFCC Staff Attorney

While juvenile delinquency has always attracted attention from communities across the state, recent years have seen a wave of public awareness about juvenile crime. The Juvenile Delinquency and the Courts Conference, which was held January 25–27 at the San Diego Holiday Inn on the Bay, focused on youth problems and incarceration patterns in California. The Judicial Council, with funding support from the State Justice Institute, sponsored the conference.

Conference organizers used the event as a vehicle for responding to the current need of California courts for practical, effective, and coordinated approaches to the handling of juvenile delinquency cases. The conference offered eight tracks: Court and Community, The Roots of Violence, Special Cases, Gender and Race, Children in the System, Prevention and Punishment, Restorative Justice, and Youthful Offenders/Accountability. The eight tracks consisted of 34 workshops conducted by leading practitioners and experts in their fields.

Plenary speakers at the conference included Bill Lockyer, California Attorney General; William C. Vickrey, Administrative Director of the Courts; Judge Susan Carbon, Superior Court of Grafton County (New Hampshire), Family Division; Tom Bettag, Executive Producer, *ABC News* and *Nightline With Ted Koppel;* Dennis Maloney, Director, Deschutes County (Oregon) Department of Community Justice; Dr. Gordon Bazemore, Director, Community Justice Institute, Fort Lauderdale, Florida; and Michael Pritchard, humorist, actor, television host, youth counselor, and former probation officer.

Continued on page 14

Delinquency Conference
Continued from page 13

In addition to offering educational workshops and thought-provoking plenary sessions, the conference had the unique goal of creating for each county a juvenile delinquency team, or working group, that would prepare a local action plan and thereby create opportunities for county representatives to meet and work together both at the conference and later, when implementing the plan back home. The teams thus encouraged participation, interaction, collaboration, and movement toward positive, concrete outcomes in all of the counties represented at the conference.

The more than 550 juvenile justice professionals and other community leaders at the conference were grouped into 55 teams representing 54 of California's 58 counties and a tribal team representing the state's Native Americans. The county teams consisted of presiding juvenile bench officers, district attorneys, public defenders, chief probation officers, law enforcement personnel, mental health professionals, educators, substance abuse counselors, political leaders, and others who come in contact with the juvenile court system.

At the conference, the teams worked individually as well as in plenary sessions and workshops, outlining ways to initiate immediate changes in their home counties. This team approach, using multidisciplinary collaboration, is based on a proven model adopted by the Judicial Council for local action and statewide coordination in addressing domestic violence. The team model has a proven synergistic effect that is easily measured in meaningful change. Conference organizers successfully adapted this model to address juvenile delinquency issues, with outstanding results.

Delinquency Case Summaries

CASES PUBLISHED FROM NOVEMBER 1, 2000, TO FEBRUARY 28, 2001

In re Antwon R. **(2001) Cal.App.4th [104 Cal.Rptr.2d 473]. Court of Appeal, Fourth District.**

The juvenile court sustained two Welfare and Institutions Code section 602 petitions for a child and committed the child to the California Youth Authority (CYA) without calculating any recommitment custody credit.

Petitions were filed against the child for committing first-degree burglary and resisting an officer. The child raised on appeal only that the juvenile court had erred in not calculating his precommitment custody credit. The People argued that, since the issue had not been raised in the juvenile court, Penal Code section 1237.1 barred the child from raising solely this issue on appeal. The child contended that section 1237.1 did not apply to juvenile appeals.

The Court of Appeal reversed the commitment order to the extent that the juvenile court had failed to calculate the child's precommitment custody credit, and affirmed the juvenile court's decision in all other respects. The appellate court noted that juvenile proceedings are not to be considered criminal prosecutions. Welfare and Institutions Code section 800 separately authorizes juvenile appeals. Penal Code section 1237.1 indicates that no appeal should be taken by the defendant from a judgment of conviction on the ground that there was a calculation error of presentence custody credits, unless the defendant presents the claim to the trial court or makes a motion to correct the record after sentencing in the trial court. According to the Supreme Court in *In re Joseph B.* (1983) 34 Cal.3d 952, Penal Code section 1237.5—which prevents an appeal from a defendant from a judgment of conviction after a guilty or nolo contendere plea—does not apply to children. The appellate court reasoned that the Legislature intended sections 1237.1 and 1237.5 to not apply to juveniles. The appellate court also stated that because section 1237.1 permits presentence custody credit, an equivalent amount of time must be subtracted from the maximum period of physical confinement for a child. Also, because Penal Code sections 1235, 1237, 1237.1, and 1237.5 include a party to a felony case (defined as a criminal action in which a felony is charged), the application of these sections to a juvenile proceeding is inappropriate because it is not a "criminal action."

The appellate court determined that the juvenile court had erred by not calculating the child's precommitment custody credit. The case was remanded for the juvenile court to (1) calculate the child's precommitment custody credit, (2) prepare an amended order reflecting the custody credit, and (3) forward a certified copy of the amended commitment order to CYA.

Manduley v. Superior Court of San Diego County **(2001) 86 Cal.App.4th 1198 [104 Cal.Rptr.2d 140]. Court of Appeal, Fourth District, Division 1.**

The Court of Appeal, Fourth Appellate District, in San Diego held that a provision of Proposition 21 allowing prosecutors to directly charge youth as adults is unconstitutional because it violates the separation of powers doctrine. Specifically, the appellate court upheld defendants' extraordinary writ of mandate, filed after the trial court overruled defendants' demurrers to the accusatory pleadings. It held that

Continued on page 15

Delinquency Case Summaries

Continued from page 14

Proposition 21 violates the separation of powers doctrine because it grants the prosecutor discretion to charge a youth as either an adult or a juvenile. And, if the youth is convicted in adult court, the court is limited in its discretion to sentence the youth as a juvenile but must instead sentence under the adult criminal court.

The San Diego District Attorney's Office had filed accusatory pleadings against the defendants in adult court under Welfare and Institutions section 707(d). The defendants challenged the constitutionality of section 707(d) by demurring to the accusatory pleadings. The trial court overruled the demurrers, and the defendants filed petitions for writ of mandate in the Court of Appeal. All petitions were consolidated for oral argument and decision. Defendants contended that section 707(d) is unconstitutional on five grounds: (1) it violates the separation of powers doctrine, (2) it deprives them of due process, (3) it deprives them of equal protection, (4) it deprives them of the uniform operation of law, and (5) Proposition 21 violates the single-subject rule.

The Court of Appeal concluded that section 707(d) is unconstitutional under the separation of powers doctrine. Section 707(d) as challenged was enacted as section 26 of Proposition 21, passed by the people of California in March 2000. Section 26 gives the prosecution the discretion to file certain offenses in either juvenile or adult court, and once a youth is convicted of a 707(d) offense in adult court, the judge must sentence the youth under the adult sentencing scheme. Before the enactment of Proposition 21, unless the youth was one of a limited set of persons for whom the Legislature mandated adult court, the judiciary possessed the discretion to select the appropriate disposition.

The defendants contended that Proposition 21 violates the separation of powers principle because it gives the executive branch the unchecked authority to prescribe which legislatively authorized dispositional scheme will be available to the court if the charges are found to be true. The appellate court restated the separation of powers doctrine, maintaining that "this principle precludes one branch of government from exercising, or interfering with the exercise of, the functions or power of either of the other branches." The appellate court also noted that the separation of powers principles apply equally to a voter-enacted statute as to an act of the Legislature. Under this doctrine, each of the three branches of government functions discretely. Specifically in the areas of criminal and juvenile justice, the executive branch is vested with the authority to determine whether to bring charges, against whom to bring them, and what charges to bring. After the charging decision has been made, the judiciary is responsible for the process leading to conviction or acquittal and retains the authority to select from among the legislatively prescribed sentencing options. Separation of powers principles preclude the Legislature from giving the prosecutor the power to control the court's selection of the disposition.

The parties agreed that separation of powers principles both give the prosecutor authority to make charging decisions and give the judiciary authority to make sentencing decisions. Therefore, the issue presented in this case as to whether section 707(d)'s discretionary direct filing provisions violate the separation of powers doctrine turns on whether the decision is "a charging decision that is properly allocated to the executive branch or is instead a sentencing decision that is properly allocated to the judicial branch and may not be delegated to the executive branch in derogation of the judicial power over sentencing."

The appellate court examined a line of Supreme Court cases exploring the separation of powers doctrine as it relates to diversion from the criminal process for first-time drug offenders. The Supreme Court found that requiring the prosecutor's concurrence limits the court's discretion to order diversion and hence violates the separation of powers doctrine. The court noted that the decision to divert was an exercise of judicial power and could not be "subordinated to a veto of the prosecutor." The court rejected the prosecutors' contention that the decision to divert was an extension of the charging decision, because the decision to divert was made after the charging decision and was therefore "fundamentally judicial in nature." The court further noted that "timing of the decision was not determinative" because the issue of whether a decision falls under the executive branch's charging authority or the judicial branch's sentencing authority is determined not by its timing but by the substance of the power and the effect of its exercise.

Here, the appellate court recognized that the discretionary filing decision granted the prosecutor under section 707(d) "cannot be neatly slotted" as either a traditional charging or a traditional sentencing decision. The court held that, when one considers the substance of the power and the effect of its exercise, rather than the timing of the decision, section 707(d) violates the separation of powers doctrine by giving the prosecutor the "unchecked authority to prescribe which legislatively authorized dispositional scheme will be available to the court if the charges are found true."

The appellate court rejected the prosecutor's argument that the prosecutor is entitled to make a charging decision that restricts the court's dispositional alternatives. The court found that section

Continued on page 16

Delinquency Case Summaries
Continued from page 15

707(d) requires the prosecutor to make two separate and distinct decisions. First, the prosecutor must decide what offenses are supported by the facts. Second, the prosecutor must determine whether the facts support a section 707(d) filing in adult court or a juvenile law disposition. The appellate court found that this second decision was neither an inevitable nor a collateral effect of the charging decision. The appellate court further distinguished this case from challenges to similar direct filing provisions in other states. Under section 707(d), if the youth is convicted of an offense in adult criminal court, the judge must sentence the youth under the adult sentencing scheme; in cases from other states, the judge retains the discretion to sentence the youth as a juvenile. The court found that it was unnecessary to examine the defendants' other constitutional arguments—specifically that it deprives them of due process, equal protection, and the uniform operation of law and that Proposition 21 violates the single-subject rule.

Finally, the appellate court found that section 26 is severable from Proposition 21. Section 38 of the proposition contains a severability provision. The court further found that the three criteria for severability were met: namely, the invalid provision is grammatically, functionally, and volitionally separable. Justice Gilbert Nares dissented to the decision.

***In re Michael M.* (2001) 86 Cal.App.4th 718 [104 Cal.Rptr.2d 10]. Court of Appeal, Fifth District.**

The juvenile court adjudged a child a ward of the court under Welfare and Institutions Code section 602.

The child was charged with two counts of violating Penal Code section 422.6(b), two counts of vandalism under Penal Code section 594(a), and one count of possession of tools to commit graffiti or vandalism under section 594.2. The child used a marker to write a racial epithet on the classroom door of the only African-American teacher at the school and also wrote a threatening expression on a pillar on the outside of the music building, in an area where African-American students regularly convened. The child admitted to writing the words when the police detective told the child that he would play a videotape of the commissions recorded by the school cameras. The child stated that he did not like African Americans because they bullied him. The child appealed the decision of the juvenile court on the ground that the classroom door and the building were not the property of the victims as interpreted under section 422.6(b).

The Court of Appeal, in a partially published opinion, affirmed the decision of the juvenile court. Section 422.6(b) provides, in pertinent part, that "no person…shall knowingly deface, damage, or destroy the real or personal property of any other person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured to the other person by the [state or U.S.] Constitution… because of the other person's race." The child argued that the school door and the pillar were the property of the school and not of the victims. The child contended that the phrase "property of any other person" requires that the victim own the defaced or destroyed property.

The appellate court determined that section 422.6(b) does not expressly require any particular ownership interest in the property. The statute does require some connection between the property that has been defaced or destroyed and the person who has been targeted because of race, color, religion, or some other bias. The statute provides for the prevention of intimidation and of interference with another's civil rights, when the intimidation or interference is based on the other's actual or perceived protected characteristic. The appellate court noted that if the child's narrow interpretation of the statute (that the property must be owned by the victim) were applied, the purpose of the statute might be frustrated. The appellate court determined that if property is regularly and openly used, possessed, or occupied by the victim so that it is readily identifiable with that person, it falls within the scope of section 422.6(b).

The appellate court determined that a reasonable trier of fact could conclude in this case that a classroom regularly and openly used by the only African-American teacher was identifiable with her and could be considered her property. The child admitted that he knew the African-American teacher taught in that particular room. Therefore, the statute was appropriately applied as to the teacher. The appellate court also concluded that the statute was appropriately applied as to the African-American students because a reasonable trier of fact could determine that the area by the music building where the words were written was regularly and openly occupied by the students so as to be identifiable with them.

The appellate court also determined that the trial court's interpretation of section 422.6(b) did not violate the child's First Amendment rights. The child argued that his words did not constitute a credible threat of violence and thus he was entitled to First Amendment protection. The appellate court noted that conduct such as vandalism is not protected by the First Amendment merely by expressing an idea: "The statute is directed at regulating conduct that is unprotected by the first amendment." The child argued that since the words were written on school property, they were nothing more than graffiti and not meant to attack the victims personally. The appellate court rejected this argument and determined that the

Continued on page 17

Delinquency Case Summaries
Continued from page 16

word written on the teacher's door carried with it a violent connotation since it produced fear in the teacher. Also, the expression on the pillar could be reasonably interpreted as a direct violent threat to the African-American students who congregated by the music building. The appellate court therefore affirmed the decision of the juvenile court.

In re Adrian R. **(2000) 85 Cal.App.4th 448 [102 Cal.Rptr.2d 173]. Court of Appeal, Second District, Division 5.**

The juvenile court removed a delinquent child from the custody of his parents, aggregated the period of physical confinement, and ordered that the child be confined in a camp community for the maximum three years.

The child was declared a ward of the court in August 1999 for having been in possession of a concealable firearm. The juvenile court determined that the maximum period of confinement was three years. The child served 30 days in custody and an additional 20 days on a probation violation. In September 1999 the child was arrested for violating Health and Safety Code section 11357(e) (possession of marijuana on school grounds). The juvenile court ordered that the child remain a ward of the court and placed the child in a camp community. The child appealed.

The Court of Appeal affirmed the decision of the juvenile court. The child contended that there was insufficient evidence supporting the finding that he had possessed marijuana. The appellate court rejected the child's arguments. The dean of students testified at trial that he had found a marijuana cigarette belonging to the child and that the child had admitted possession to the arresting officer. The appellate court stated that the trier of fact is to resolve any discrepancies and that the appellate court does not make credibility determinations.

In re Joseph F. **(2001) 85 Cal.App.4th 975 [102 Cal.Rptr.2d 641]. Court of Appeal, First District, Division 5.**

The juvenile court declared a child a ward of the court and placed him on probation after determining that he had committed battery on a police officer and resisted arrest. (Pen. Code, §§ 148(a), 243(b).)

The middle school's assistant principal and the school district's police resource officer were in a meeting when they noticed the child and a friend outside, near some classrooms. After the police officer recognized the children as students of a nearby high school, the assistant principal went to investigate. The assistant principal sought help from the officer. The police officer, who was wearing a uniform and badge, approached the boys and asked them to stop. The child yelled profanities and continued walking away. The officer attempted to apply an armlock, and a struggle ensued. After the child escaped and again began to walk away, the officer applied handcuffs. School hours at that middle school end at 1:40 p.m., although after-school activities may extend past 3:00 p.m. Penal Code section 627.2 requires a visitor to register with the principal or authorized designee during school hours. The child had not registered as a visitor when he was found on school grounds at approximately 3:00 p.m. The child argued that he was on school grounds because he was accompanying his friend to give the friend's little brother a house key, that he did not know who the assistant principal was when the latter approached them, that he was on his way home after being told to leave by a female campus monitor, and that he did not know that the man who grabbed him was an officer. The child appealed the decision of the juvenile court sustaining a petition of battery and resisting arrest.

The Court of Appeal, in a partially published opinion, affirmed the decision of the juvenile court. The child argued on appeal that the officer was not engaged in the lawful performance of duties when the officer approached him. In order for a person to be convicted of the aforementioned offenses, the officer must have acted reasonably and lawfully. The officer argued that he was acting in his capacity to provide a safe and secure environment for the district's schools as provided by the California Constitution. (Cal. Const., art. I, § 28(c).) Penal Code section 626.7 provides that if it reasonably appears to an officer that a person has entered the campus to commit or is committing an act likely to interfere with the peaceful conduct of the school's activities, then the officer may ask the person to leave, and failure to comply is a misdemeanor. In this case, the officer had the right to detain the child and inquire who he was and why he was on the school's grounds after the assistant principal had requested assistance. Given the child's escalating resistance to the officer, the officer had acted reasonably. The appellate court noted that school officials need not articulate a specific crime that may be about to take place in order to detain an outsider on campus. In addition, school officials are authorized to compel outsiders who have no legitimate purpose for being on school grounds to leave, regardless of school registration hours.

The child also argued that there was insufficient evidence of battery. He argued that the officer had used excessive force and he himself had acted in self-defense. The appellate court concluded that there was insufficient evidence that the officer had used excessive force. The appellate court affirmed the decision of the juvenile court and sustained the battery and resisting-arrest petition.

Justice Barbara J. R. Jones, in a dissenting opinion, asserted that there was insufficient evidence that the officer had acted lawfully at the time of the offense. Justice Jones stated that there was no reasonable basis for the officer to detain

Continued on page 18

Delinquency Case Summaries
Continued from page 17

someone on suspicion of violating statutes pertaining to trespassing on a school campus without registering. Both parties testified that the child was in the parking lot, leaving school grounds, when the incident occurred. In addition, there was no evidence that the child was going to interfere with the peaceful conduct of school activities; there is no local ordinance that forbids nonstudents to be on school grounds after school hours; and no criminal activity was afoot. Justice Jones contended that the Constitution and the Education and Penal Codes do not trump Fourth Amendment protections by creating a "special needs" administrative search-and-seizure exception in public schools, especially when, as in this case, the investigative stop is uncontested and unlawful.

In re Dallas W. **(2000) 85 Cal.App.4th 937 [102 Cal.Rptr.2d 493]. Court of Appeal, Second District.**

The juvenile court sustained a petition against a child for violating Penal Code section 314 (misdemeanor indecent exposure).

The 16-year-old child was walking with friends and twice stopped to moon oncoming traffic. An employee of the City of Artesia was concerned for the safety of the people in the street and called the police. The employee was adamant about action being taken, and the child was detained and cited. The juvenile court found that the child was not acting with the intent to arouse himself or a third person and had committed the act to affront and annoy people. The juvenile court nonetheless sustained the petition. The child appealed.

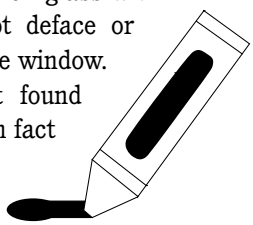
The Court of Appeal reversed the decision of the juvenile court. The child contended that the evidence was insufficient to categorize his behavior as indecent exposure because there was no evidence that he bared his buttocks "lewdly." Penal Code section 314 provides that every person who willfully and lewdly exposes his person or private parts in a public place where there are other people to be offended or annoyed is guilty of a misdemeanor. The appellate court determined that lewd intent is an essential element of this offense and is something more than nudity. It was not enough to act with the intent to "affront" others.

The appellate court relied on the Supreme Court case *In re Smith* (1972) 7 Cal.3d. 362, in which a sunbather on an isolated beach was not found to have lewdly exposed his private parts within the meaning of section 314. The Supreme Court in *Smith* declined to attribute the Legislature with the belief that a person sunbathing in the nude needs constant police surveillance to prevent such crimes against society in the future. The appellate court analogized this rationale to the case described here, in which a teenager found to be mooning passing traffic did not require constant police surveillance to prevent that action in the future. The California Jury Instructions, Criminal (CALJIC) 16.220 defines "lewdly" as "with the specific intent to direct public attention to one's person [or] genitals for the purpose of one's own sexual arousal or gratification, or that of another, or to affront others." (*Id.* at 366.) The juvenile court mistakenly read the clause "to affront others" as a nonmodified independent clause, and this interpretation is not a proper statement of law. The child in this case did not act with sexual intent to arouse himself or a third person. The appellate court stated that CALJIC 16.220 may be inconsistent with the *Smith* finding. The appellate court reversed the decision of the juvenile court and noted that the child had exhibited bad judgment and poor taste.

In re Nicholas Y. **(2000) 84 Cal.App.4th 941 [102 Cal.Rptr.2d 511]. Court of Appeal, Second District, Division 4.**

The juvenile court adjudged a child a ward and placed him at home on probation.

In the early morning hours, the child wrote on the glass window of a projection booth at a movie theater with a Sharpie marker. The child was arrested and admitted to police that he had written "RTK" (standing for the "right to crime") on the window. The letters "RTK" were written in approximately 30 other places in the theater. The child argued that writing on glass with the marker did not deface or cause damage to the window. The juvenile court found that the child had in fact violated Penal Code section 594(a). The child appealed.



The Court of Appeal affirmed the decision of the juvenile court. Penal Code section 594(a) provides that every person who maliciously defaces, damages, or destroys "with graffiti or other inscribed material" is guilty of vandalism. The phrase "graffiti or other inscribed material" is defined by section 594(e) as "any unauthorized inscription, word, figure, mark, or design that is written, marked, etched, scratched, drawn, or painted on real or personal property." The child contended that he did not violate the statute because the term "deface" contemplates a permanent alteration of the surface, and in this case the marker ink was easily removed and did not permanently alter the window. The juvenile court stated that graffiti may be, and is regularly, created with marker pens. The court determined that it would be irrational to hold that a marker used on stucco, for example, violates the statute but a marker used on glass does not violate the statute. In each case, the surface is marred by graffiti and must be restored

Continued on page 19

Delinquency Case Summaries

Continued from page 18

to its original condition. The appellate court also determined that the primary meaning of the word "deface" does not incorporate an element of permanence but rather is "to mar the face, features, or appearance of." The marring of the surface is no less defacement just because it is easily removed. The appellate court held that the child was properly found to have violated Penal Code section 594(a)(1).

***In re Francisco S.* (2000) 85 Cal.App.4th 946 [102 Cal.Rptr.2d 514]. Court of Appeal, Second District.**

The juvenile court declared a child a ward of the court for violating Health and Safety Code section 11357(e) (possession of marijuana on school grounds).

The child admitted to having had marijuana on school grounds, and the court imposed the maximum penalty, a $250 fine. The court also placed the child at home on probation, required that he report to his probation officer, required him to submit to random drug testing, required him to be home between the hours of 6 p.m. and 7 a.m., and imposed other probationary conditions. The People filed a Welfare and Institutions Code section 777 petition to end the child's home probation, alleging that the child had failed to report to his probation officer, had tested positive for drugs, had been terminated from his mandatory school program for drug usage, and had failed to be home before curfew on 14 consecutive nights. The juvenile court sustained the petition and continued the hearing to determine a suitable placement. The People also filed a contempt petition alleging that the child had violated his probationary conditions. The juvenile court found 15 contempts—one for each night of broken curfew and one for failing to report to his probation officer. The juvenile court then imposed 60 days' juvenile hall confinement for contempt, staying 30 days.

The child petitioned for writ of habeus corpus, and the appellate court ordered him released and issued an order to show cause. The child contended that the juvenile court had erred in (1) imposing punishment for contempt that exceeded the maximum punishment for the offense for which he was on probation, (2) not considering less restrictive confinement, (3) finding him in contempt without a written order, and (4) imposing confinement that violated Penal Code section 654.

The Court of Appeal issued the writ of habeas corpus and determined that the juvenile court had erred in confining a delinquent child for probation violations when the offense carried no confinement time. The appellate court noted that probation for a juvenile is not, as with an adult, an act of leniency in lieu of punishment. The juvenile court had properly placed the child on probation for an offense that carried no confinement time. The juvenile delinquency court can enforce compliance with its orders through the exercise of its contempt powers. However, a delinquent child may not be confined for a period longer than the maximum period of punishment that may be imposed on an adult who commits the same offense. The appellate court reconciled these two principles. The child in this case committed an offense for which an adult cannot be incarcerated and the maximum penalty is a $250 fine. The Legislature chose to prohibit any confinement for the offense. Also, the child was held in contempt and incarcerated for the same conduct for which the Welfare and Institutions Code section 777 petition was filed. The child could not be confined for his violations of probation. The juvenile court had improperly elevated the probation violations to contempts. The Legislature's "absolute prohibition against confining a delinquent ward for a longer time than permitted for an adult prohibits imposing confinement for contempt based on violations of probationary conditions." The appellate court remanded the case to the juvenile court for it to revoke its imposition of confinement for contempt.

In addition, the child argued that the camp commitment was unauthorized because the punishment for a violation of Safety Code section 11357(e) is limited to a fine not more than $250. The child contended that camp community placement could be authorized only as an order modifying the previous dispositional order under Welfare and Institutions Code section 777 and finding the previous order rehabilitatively ineffective.

The appellate court held that such a finding is not required when the prosecution proceeds with a new Welfare and Institutions Code section 602 petition and the juvenile court elects to aggregate terms based on previously sustained petitions permitted by Welfare and Institutions Code section 726. The juvenile court may consider the child's entire record in determining the maximum period of confinement. When the child has committed more than one offense, any of the offenses may serve as the measurement for confinement. The maximum length of confinement may be determined by the most serious offense, even if the most serious offense is the previous offense. The appellate court stated that an offense in a new petition that is not punishable by incarceration may be aggregated with a previous offense. The child argued that he could be committed to camp only pursuant to section 777. The appellate court held that both sections 777 and 602 are alternatives for accomplishing the same end. In this case the child was notified that the current offense could be aggregated with his previous offense. The appellate court determined that the offenses were properly aggregated and that the commitment to camp was proper. It also concluded section 777 was not the exclusive method in this case, and the juvenile court did not need to make a finding of rehabilitative ineffectiveness prior to committing the child to camp.

Dependency Case Summaries

CASES PUBLISHED FROM NOVEMBER 1, 2000, TO FEBRUARY 28, 2001

In re Jaime M. **(2001) 87 Cal.App.4th 420 [104 Cal.Rptr.2d 415]. Court of Appeal, Fourth District, Division 3.**

The trial court ordered that a child be transported and placed in the MacLaren Children's Center (MCC).

The child was born with phencyclidine (known as PCP) in her system and has suffered from self-destructive behavior and violent tendencies. She was declared a dependent at 10 months and throughout her lifetime of 15 years had 17 different placements. One of those placements was MCC, which is a nonsecure facility but is designated a placement to protect children from abuse and neglect.

Delinquency proceedings were initiated against the child when she attacked an attendant and stole the attendant's key in the Metropolitan State Hospital, where she was staying. The delinquency court denied a motion to dismiss a Welfare and Institutions Code section 602 petition and ordered that the matter be coordinated with mental health proceedings, affirming that the mental health department could evaluate the child. The delinquency court ordered that the child be released to the Department of Children and Family Services (DCFS) and transported to MCC.

DCFS learned of this order the next day in dependency court. DCFS then moved to vacate the order under Welfare and Institutions Code section 206, which prohibits children adjudicated under section 602 from being placed in the same facility with children declared dependents of the court. The delinquency court denied the motion and reasoned that the child had not yet been adjudicated a ward under section 602 and remained a dependent child who could remain in the MCC facility. The juvenile court denied a request for a 24-hour stay of the order for appellate review. The appellate court granted an emergency stay of the order to transport the child to MCC. Days later, DCFS petitioned an extraordinary writ directing the juvenile court to vacate its order.

The Court of Appeal granted the petition for a writ of mandate. Section 206 provides that children who are declared dependents under section 300 shall be provided with separate facilities segregated from persons alleged or adjudged to come within the description of section 602. In this case, the child was alleged to come within the description of a section 602 ward, and on its face section 206 prevented her from being placed at MCC. Even if the delinquency court had the discretion to place the child in the MCC facility (which it did not), the child's previous violent behavior and MCC's failure to control the child warranted another placement alternative. Section 602 makes no distinction between children who first encounter the system as section 602 wards and children who are already declared dependents of the court. The appellate court noted that the delinquency court could, in fact, order the child to DCFS custody while the 602 petition was still pending.

Section 241.1 requires that, when a child appears to come within both dependency and delinquency jurisdiction, the county welfare or probation department make a joint recommendation to the court articulating the status that best serves the child's interest. The court presented with the second petition must make the necessary determination. The appellate court stated that a specific decision is required from the court as to which type of jurisdiction must be exercised over the child. In this case, the juvenile delinquency court had not yet made a determination as to the jurisdiction of the child. It had already denied a section 241.1 motion to dismiss the section 602 petition and was waiting for a mental health assessment of the child. Because the child's status had not yet been determined, the appellate court noted that the decision had to be made quickly. The appellate court instructed that, within 15 days of the publication of the filing of its opinion, an updated section 241.1 report must be filed recommending an appropriate placement for the child. Within 20 days of the report's filing, the juvenile court must hold a hearing and make a prompt determination of the child's status under section 241.1. Depending on the court's determination of the child's status, either the delinquency court or the dependency court must then settle the child's placement as soon as possible.

In re Steven H. **(2001) 86 Cal.App.4th 1023 [103 Cal.Rptr.2d 649]. Court of Appeal, Second District.**

The juvenile court terminated the parental rights of a mother without providing notice to the child's grandparents.

The mother, 13 years old, was declared a dependent due to her own mother's medical neglect and failure to comply with the service plan. The child was also adjudicated a dependent, but custody was vested with his mother under a family maintenance plan. Although initially the mother provided her child with good care, approximately one year later the Orange County Social Service Agency (SSA) filed a petition alleging that the child came within the provisions of Welfare and Institutions Code 300(a) and (b) because the mother had spanked or hit him on at least one occasion. The juve-

Continued on page 21

Dependency Case Summaries

Continued from page 20

nile court sustained the petition. While the mother was in foster placement, she requested that the child be taken into protective custody because she was unable to care for him. The mother then left her placement, and her whereabouts were unknown. The child's grandmother indicated that she did not know where the mother was but that the mother had tried to contact her by phone. The mother eventually contacted the social worker without indicating her location or giving a contact phone number. The mother then visited the child in his foster home and indicated to the foster family agency that she wanted her son to be adopted by his foster family.

At the six-month review hearing, SSA recommended the termination of reunification services, and the matter was set for a contested hearing. The juvenile court denied the mother's counsel's request for a continuance to locate the mother and determine her wishes. The juvenile court terminated reunification services and set the matter for a Welfare and Institutions Code section 366.26 hearing. The mother was given notice of the section 366.26 hearing by publication. The mother's attorney argued at the hearing that notice had not been given according to Welfare and Institutions Code section 366.23(b)(5)(B), which requires that notice be given to the child's grandparents. The juvenile court overruled the objection and terminated parental rights. The mother's attorney appealed the juvenile court's decision, though the mother had not directed her to file such an appeal.

The Court of Appeal reversed the decision of the juvenile court. First, in addressing SSA's motion to dismiss the appeal, the appellate court determined that a dismissal would be inappropriate in this case despite the general rule that an attorney cannot appeal without the client's consent and that an appeal shown to have been signed by an unauthorized attorney is ineffectual in preserving the right to appeal. The appellate court rejected the mother's attorney's first argument against dismissal—that an appellant who is a child need not personally authorize an appeal. (The attorney argued that counsel for a child in dependency proceedings acts as a guardian ad litem and can make determinations regarding appeals. The appellate court noted that court-appointed counsel is not always obligated to pursue an appeal. Also, Welfare and Institutions Code section 317(d), relating to the legal representation of children at all subsequent proceedings, read in context as determined by the appellate court, says that the attorney must continue to represent the child "at all subsequent proceedings *before the juvenile court*." The mother, even as a minor, has the right to decide whether an appeal is appropriate.) The appellate court was persuaded, however, by the mother's attorney's argument that the mother had not been given proper notice of the hearing and did not know the hearing was taking place. The mother, therefore, could not be expected to personally authorize an appeal. Thus, the court determined that a dismissal was inappropriate.

In deciding the merits, the appellate court interpreted Welfare and Institutions Code section 366.23(b)(5)(B). This subdivision, in pertinent part, provides that in any case in which service to the parent by certified mail on the counsel of record or by publication is ordered, the court shall order that notice be given to the child's grandparents, if there are any and if their residences and relationship to the child are known. In this case, the mother was notified by publication and the child's grandparents were not notified. SSA argued that the mother had no standing to argue that the grandparents did not receive notice. In regard to this issue of standing, the appellate court held that notice to the grandparents is significant only when the parents cannot be located, and the statute would provide grandparents with notice in *all* cases if the purpose were to give the grandparents an opportunity to preserve their own rights. The grandparent notification provision is, in part, an attempt to give the missing parent notice. The appellate court noted that sometimes family members, out of either loyalty to the missing parent or distrust of the government agency, would not give information to the SSA even if they had it. However, if those same relatives were given notice of a hearing to terminate parental rights, they might be willing to inform the parent of the hearing.

SSA argued that the failure to give notice to the child's grandparents was harmless. The appellate court determined that SSA's failure to give notice to the maternal grandmother was not harmless. The grandmother had informed the social worker that she had had telephone contact with the mother. The grandmother's denial of knowledge of her daughter's whereabouts does not necessarily mean that she did not have the means to contact her daughter. The failure to give notice to the child's grandparents, specifically the maternal grandmother, was not harmless beyond a reasonable doubt. The appellate court reversed the decision of the juvenile court and remanded it to a new section 366.26 hearing after the provision of proper notice under section 366.23(b)(5)(B).

***In re Arlyne A.* (2000) 85 Cal.App.4th 591 [102 Cal.Rptr.2d 109]. Court of Appeal, Second District, Division 1.**

The juvenile court declared five children to be dependents of the juvenile court.

In June 1998, when the mother and her five children were living with the mother's mother, the oldest child reported that her stepfather had molested her for several years. The stepfather was the biological father of the other

Continued on page 22

Dependency Case Summaries

Continued from page 21

four children and was separated from their mother. The police in Colton, where the alleged abuse had occurred, were notified and gave the father's address as his parents' home in Rialto. After the Department of Children and Family Services (DCFS) determined that the mother was no longer living with the children's grandmother and that the oldest child was receiving sexual abuse counseling, the dependency case was closed. The mother had moved with her four youngest children without notifying her oldest daughter or her own mother.

In November 1998, DCFS reopened the case. The petition listed the father's last known address as the family's former home in Colton, and did not list the whereabouts of the mother. The oldest child's attorney noted that the mother might be with her in-laws in Rialto or Colton. The court ordered DCFS to investigate the whereabouts of the mother and her four youngest children. DCFS obtained a 1994 address in Fontana for the father from the Department of Motor Vehicles and sent notice of the next hearing to that address. The juvenile court then found that due diligence had been demonstrated in attempting to find the father. The whereabouts of the mother and four children remained unknown despite suggestions to DCFS from the maternal grandmother, who also suggested locating the father at the paternal grandparents' address from the 1998 Colton police report. The court nonetheless declared the children dependents of the court under Welfare and Institutions Code section 300(a), (b), (d), (g), and (j). When DCFS finally contacted the mother, the children were placed with the maternal grandmother.

The father filed a written motion to set aside the adjudication findings, arguing that DCFS could have located him at his parents' home by consulting their own records (the 1998 investigation). The juvenile court denied the motion to set aside the adjudication findings for lack of due diligence. The father appealed the orders (1) adjudicating his children as dependent, (2) denying the motion to set aside the adjudication order for lack of due diligence, and (3) declaring his four children to be dependents of the juvenile court.

The Court of Appeal reversed the orders adjudicating the children as dependent under Welfare and Institutions Code section 300, denying the motion to set aside the adjudication order for lack of due diligence, and declaring the children to be dependents. The appellate court concluded that the juvenile court lacked personal jurisdiction over the father. The father argued that DCFS had failed to act with due diligence because his residence address was available from the Colton police report and directory assistance information for the city of Rialto. *Reasonable diligence* is described as a thorough, systematic investigation and inquiry conducted in good faith. DCFS had relied on the 1994 Fontana address, which was outdated, even when it knew that the father, mother, and children had since lived in Colton.

The appellate court found that DCFS had failed in its obligation to thoroughly investigate the maternal grandmother's tip regarding the 1998 Colton police report. DCFS had ignored suggestions from the maternal grandmother and the child's attorney that the father was living with his parents in Rialto. The appellate court found that DCFS had failed to search the most likely addresses and investigate the information, and thus the record did not support the juvenile court's finding of reasonable diligence. The appellate court determined that the juvenile court lacked personal jurisdiction, reversed the juvenile court's orders regarding the four children, and directed the juvenile court to start the dependency proceedings over and to properly notify the father.

In re Jean B. **(2000) 84 Cal.App.4th 1443 [101 Cal.Rptr.2d 522]. Court of Appeal, Second District, Division 1.**

The juvenile court terminated jurisdiction over a child after the child's father abducted her. The court also recalled the warrants for the child's return and the father's arrest.

The child's parents had both been arrested on outstanding drug-related warrants. Both had substance abuse problems and often fought. Reunification services were ordered for both parents. The parents completed parenting classes and drug counseling and tested negative for drugs. The court then liberalized the parents' visits with the child, and eventually the child lived with the mother at the maternal grandmother's home. The father agreed to this living arrangement and the court formally placed the child with the mother. In March 1996 the father took the child for a walk with the mother's permission, and he and the child never returned. Therefore, warrants were issued.

In April 1998 the father's attorney asked for a recall of the warrants. This request was denied by the juvenile court. In October 1998 the Department of Children and Family Services (DCFS) reported that its efforts to locate the father and child were unsuccessful. In April 1999 DCFS filed an abduction report and the juvenile court placed the child in the care of DCFS. The father's attorney's request to terminate jurisdiction was denied. In December 1999 DCFS reported lack of information, and the court terminated jurisdiction because the child had been missing for some time. The warrants were recalled, and DCFS appealed.

Continued on page 23

Dependency Case Summaries

Continued from page 22

The Court of Appeal reversed the order of the juvenile court. The termination of jurisdiction and recalling of the warrants were unauthorized. The father's conduct (1) violated the juvenile court's orders, (2) left an at-risk child in the custody of a parent with a history of drug abuse, and (3) ignored the existence of the need for jurisdiction until the child turns 18 or is found and returned to the court. The progress of an ongoing dependency proceeding was thwarted by a parent's abduction of his child and avoidance of the court's grasp. Therefore, "the court has no reason to do anything but issue warrants for their arrests and await their return." The appellate court directed the juvenile court to issue new warrants for the father's arrest and the child's return, to set the matter for periodic review, and to take action to secure the child's return.

***In re Eileen A.* (2000) 84 Cal.App.4th 1248 [101 Cal.Rptr.2d 548]. Court of Appeal, Fourth District, Division 3.**

The juvenile court terminated a mother's parental rights.

The child was declared a dependent of the court when she was one year old because the child's father had caused severe physical abuse to her and the mother had failed to appreciate the severity of the child's injury. The juvenile court denied the mother reunification services. The child's father was imprisoned for felony child abuse. Despite the denial of reunification services, the mother attended parenting and Al-Anon classes. She also attended each of the child's medical appointments, asked to hear the child on the phone, paid for a personal counselor, and consulted a lawyer to seek a divorce from the child's father. At the time of the Welfare and Institutions Code section 366.26 hearing, the mother's trial attorney failed to file a Welfare and Institutions Code section 388 modification petition even though the mother had made progress and had made positive changes. The mother appealed the termination of parental rights and claimed that the failure to file a section 388 petition constituted ineffective assistance of counsel.

The Court of Appeal determined that the mother's attorney's failure to file a 388 petition indeed constituted ineffective assistance of counsel. The Supreme Court's general mandate requires that claims of ineffective assistance of counsel be raised by habeas corpus. However, the California Supreme Court in *People v. Pope* (1979) 23 Cal.3d 412, 426, determined that in instances in which "there simply could be no satisfactory explanation" for trial counsel's action or inaction, the argument could be brought on appeal. The appellate court determined that in this case, because of the mother's efforts and because a section 388 petition was the only hope to maintain her parental rights, it was proper to raise this claim on appeal. The court also distinguished this case from *In re Meranda P.* (1997) 56 Cal.App.4th 1143 (waiver of ineffective assistance of counsel claim when habeas corpus claim filed after a section 366.26 hearing). In this case, the only chance for the mother to make the claim of ineffective assistance of counsel was to file directly on appeal.

The appellate court made a distinction between criminal cases and dependency cases with respect to ineffective-assistance-of-counsel claims, because it cannot make determinations about the latter without attention to the passage of time and intervening events in a child's life. The appellate court stated that, on remand, the trial court needs to consider the child's current status. The prima facie showing of prejudicial assistance is all that is required for an updated review hearing, and the parent need not convince the appellate court that the ineffective assistance merits a reversal requiring that things be as they were had the assistance been effective.

The appellate court determined that the mother in this case had made a prima facie showing of prejudicial ineffective assistance of counsel. The appellate court stated that the section 388 petition is vital to the constitutionality of basic dependency law. The factors evaluated in any modification petition include (1) the seriousness of the problem that led to dependency and the continuation of that problem, (2) the strength of the relative bonds between the child and his or her parents or caretakers, and (3) the degree to which the problem leading to dependency can be ameliorated or removed and the degree to which it has been. In this case, the problem was omission, or ignorance of abuse (as opposed to drug abuse or being the offending parent); the mother had made all efforts to maintain a relationship with her child; and the problem leading to dependency, the child's father, was in prison. Because in this case the section 388 petition was a clear winner, the prima facie case of prejudicial ineffective assistance of counsel was demonstrated. The appellate court reversed the termination of the mother's parental rights and directed the trial court to conduct a review hearing to consider under section 388 whether the child's best interest would be promoted by affording the mother reunification services. The appellate court also reversed the termination of the father's parental rights, but indicated that adequate protection must be given to the child through the reunification services afforded to the mother.

***In re Rubisela E.* (2000) 85 Cal.App. 4th 177 [101 Cal.Rptr.2d 760]. Court of Appeal, Second District, Division 2.**

The juvenile court sustained a dependency petition under Welfare and Institutions Code sections 300(b),(c),(d), and (j) because of a father's sexual abuse of his oldest daughter.

Continued on page 24

Dependency Case Summaries

Continued from page 23

The father and mother had six children, two girls and four boys. Allegedly, the father had sexually abused his oldest child by asking her to orally copulate with him. The victim was detained in shelter care, and the other children were released to the mother on the condition that the father not reside with them. At the adjudication hearing, the victim's therapist testified that the child's discussion of the incident had been consistent and that the child had revealed other incidents involving the sexual misconduct of her father. Although the victim's sister did not awaken during the alleged incident, the juvenile court determined that there was sufficient evidence that the victim's father had requested oral copulation from his daughter. The victim testified consistently that this request had been made, the father had difficulty stating that the child's testimony was incorrect, and occasionally the mother would sneak home from work to see if her husband was doing anything wrong. The victim's care, custody, and control were placed with the Department of Social Services. The victim, father, and mother were ordered to obtain sexual abuse counseling. The father was permitted to visit the family on holidays if the victim was not present. The juvenile court ordered that the mother could have unmonitored visits with the victim. The father was permitted to visit the victim with a department-approved monitor if the victim agreed and if the victim's therapist did not anticipate any risk. The father appealed, contending that there was insufficient evidence supporting the juvenile court's conclusion that the victim had been abused; that the evidence was insufficient to support a finding that all of the children were described by Welfare and Institutions Code sections 300(b), (c), (d), and (j); and that there was a lack of clear and convincing evidence that he should have been removed from the home or denied custody of his children.

The Court of Appeal determined that there was substantial evidence that the father had sexually abused his oldest daughter; that she was described by Welfare and Institutions Code sections 300(c) and (d) because of her father's conduct; and that the youngest daughter was described by section (j). Therefore, the appellate court determined that the juvenile court's decisions to remove the father from the family home and deny him custody of the children had been proper.

The appellate court rejected the father's argument that the victim was inconsistent in her retelling of the incident to various investigators. Although the victim may have given inconsistent information about the exact circumstances, the fact that the father asked her for oral copulation remained unchanged in her retelling of the incident. Also, the testimony of a single witness can be sufficient to uphold a judgment.

A child may be found dependent under section 300(c) if he or she is suffering serious emotional damage or is at risk of suffering serious emotional damage, as evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward oneself or others, as a result of the conduct of the parent. In this case, given the previous conduct of the child's father, the juvenile court was justified in finding that the victim fell within the context of this section. The victim also fell within the purview of section 300(d) because it was determined that she had been sexually abused or there was a substantial risk that she would be sexually abused by her parent. Section 300(b) states that a child may be adjudged a dependent if he or she has suffered or there is substantial risk that he or she will suffer serious physical harm or illness as a result of the failure or inability of his or her parent to adequately supervise or protect the child. Section 300(b) describes the mother's conduct and not the father's conduct in this case. Since the mother did not appeal, the appellate court reversed the section 300(b) finding.

Section 300(j) states that a child may be adjudicated a dependent when the child's sibling has been abused or neglected as defined in section 300(a), (b), (d), (e), or (i) and there is substantial, risk that the child will be abused or neglected as defined in those sections. The court should consider the following: the circumstances surrounding the abuse and neglect of the sibling, the age and gender of each child, the nature of the abuse and neglect of the sibling, the mental condition of the parent or guardian, and any other facts the court considers probative. In this case, the victim fell within the purview of section 300(c), (d), and—due to her mother's neglect—(b). The appellate court determined that the circumstances surrounding the abuse of the victim supported a finding that the younger sister should be adjudicated a dependent under section 300(j). In the victim's absence, the younger daughter would be at risk of the father's sexual advances. The appellate court determined that there was no evidence of potential sexual misconduct with respect to the male children. The appellate court noted that it is possible for brothers of molested sisters to be molested, but in this case there was no demonstration that the sons were in substantial risk of sexual misconduct. The appellate court terminated jurisdiction as to the sons. The appellate court also determined that the juvenile court had not abused its discretion in ordering that the father remain outside the home.

Other Cases Involving Children

CASES PUBLISHED FROM NOVEMBER 1, 2000, TO FEBRUARY 28, 2001

In re Francisco M. **(2001) 86 Cal.App. 4th 1061[103 Cal.Rptr.2d 794]. Court of Appeal, Second District, Division 5.**

The superior court detained both a 17-year-old and a 15-year-old who had been declared material witnesses in a pending criminal trial in a case in which the defendant allegedly killed a person and attempted murder of the 17-year-old.

The victim was driving a car; the 17-year-old was a passenger in the car and witnessed the shooting. The People theorized that the defendant belonged to a rival gang of the gang to which the 17-year-old and the victim belonged. The 17-year-old was subpoenaed as a witness for the preliminary hearing and was presented in court handcuffed because he did not want to testify. The the 17-year-old testified, but afterward he indicated that he would not come to court if subpoenaed for the trial, and that he feared for his life if he testified in court. As the trial date approached, the People filed an ex parte motion to have the 17-year-old detained for the trial. The motion was granted, and the youth was produced in custody the next day. The superior court determined that the youth fell within the provisions of Penal Code section 1332(a) (relating to material witnesses). The superior court set bail at $100,000 and returned the youth to custody. The commitment order was reviewed by another judge pursuant to section 1332(c), and at the statutory 10-day review, the commitment order was upheld.

A section 1332 detention motion seeking the detention of the 15-year-old, who was also a member of the victim's gang, was also filed. The superior court ordered that a subpoena be issued and that the youth be brought to court for a hearing on bail. In court, the youth stated that he would not appear and indicated that he feared harm to himself and his family if he testified in the case. After the court held a section 1332 proceeding, the 15-year-old was determined to be a material witness in the pending criminal trial, and bail was set at $100,000. The two youths filed petitions for writ of habeus corpus, arguing that their continued detention violated article I, section 10 of the California Constitution, which provides that witnesses may not be unreasonably detained.

The Court of Appeal concluded that Penal Code section 1332 is constitutional; however, procedural safeguards must ensure that the interests of the state and the witnesses may be adequately heard and protected. The appellate court determined that section 1332, on its face, does not violate article I, section 10 of the California Constitution. The incarceration of witnesses is permitted if the witness refuses or is unable to post bond as set by the court. The appellate court noted that the validity of material witness statutes under the federal Constitution has long been accepted. The appellate court determined that it was not necessary for the trial court to seek a written undertaking of the witness before ordering the witness's bail or detention. The appellate court stated that, on a proper showing that the witness will not appear unless security is required, the court is empowered to (1) require the witness to submit a written undertaking in which he or she promises to appear and testify and further promises to forfeit security should he or she fail to appear; (2) set a reasonable bail amount as the required security; and (3) detain the witness if he or she refuses to enter such an undertaking. The appellate court stated that no on-the-record exchange or formal process to seek a written undertaking is required, and that the failure to post bail is implicitly deemed a refusal to enter into the undertaking.

The appellate court stated that the detention of witnesses is not to punish them for recalcitrance but rather to secure their attendance. The witness's right not to be unreasonably detained requires certain procedural safeguards allowing his or her interests to be heard in conjunction with the state's interests. Under section 1332(a), the court should consider the following, though the list is not exhaustive: (1) the nature of the charges in the underlying criminal prosecution; (2) the nature of the witness's proposed testimony; (3) the length of the proposed detention; (4) the evidence relevant to whether the witness will or will not appear and testify; (5) the age and maturity of the witness; (6) the harm to the witness and his family flowing from incarceration; (7) the witness's financial resources; (8) the circumstances of any continuance of the underlying prosecution that will prolong the prosecution; and (9) whether steps short of incarceration are feasible and adequate to protect the interests of the prosecution, the witness, and the defendant in the underlying prosecution.

In this case, the appellate court determined that the immediate release of the youths was not warranted. In response to a suggestion by the 15-year-old at oral argument, the appellate court decided to remand the case to the superior court to conduct hearings so that the youths may be heard. The hearings will address the question of whether the youths should remain in custody in lieu of security and

Continued on page 26

Other Cases Involving Children

Continued from page 25

will be consistent with the appellate court's expressed views in this opinion.

Guardianship of Elan E. **(2000) 85 Cal. App.4th 998 [102 Cal.Rptr.2d 528]. Court of Appeal, Second District, Division 6.**

The probate court ordered a child's grandparents to pay the grandchild's attorney's fees and costs.

The court appointed an attorney for the child in a guardianship proceeding. The attorney acknowledged that he would not be compensated for his services, understanding that both the child and his parents were indigent. The attorney stated on some occasions that he was appearing pro bono. However, when the petition for guardianship was granted, the attorney moved to have the grandparents pay the child's attorney's fees and costs. The grandparents appealed.

The Court of Appeal reversed the decision of the probate court. Section 1470 of the Probate Code pertains to the appointment of counsel. Section 1470(c)(2) states that if an attorney is appointed to represent a child, compensation is to be paid by the child's parents or the child's estate. The trial court interpreted the term "parent" as including a guardian, such as a grandparent or relative caregiver. In determining the legislative intent of the statute, the appellate court found the language in section 1470 unambiguous. The statute provides no authority for compelling a nonparent to pay a guardianship attorney's fees and costs. The attorney argued that the appointment of counsel in guardianship proceedings is comparable to the appointment of counsel in child custody cases, as provided by the Law Revision Commission. In child custody cases, the child's attorney's fees and costs "shall be paid by the parties in the proportions the court deems just." (Fam. Code, § 3153(a).) The appellate court stated that the commission's comment referred only to the appointment of counsel, not to attorney compensation. The appellate court determined that section 1470 was to be interpreted literally and it was not in the position to construe the term "parent" as including grandparents. The appellate court noted, "The trial court's ruling may be a fair result and, were we in the Legislature, we might vote for statute authorization to require grandparents to assume financial responsibility for an indigent minor's attorney's fees and costs in these circumstances." The appellate court reversed the trial court's decision ordering attorney's fees and costs and indicated that the parties must bear their own costs on appeal.

In re Guardianship of Olivia J. **(2000) 84 Cal.App.4th 1146 [101 Cal.Rptr.2d 364]. Court of Appeal, First District, Division 1.**

The trial court dismissed a petition for guardianship by the former domestic partner of the child's mother.

The appellant was living in the same household as the mother and child for about two years before the relationship between the mother and the appellant ended. The child referred to the appellant as "Mama." The appellant filed a petition for guardianship with the right to visitation. The petition was later amended to allege that parental custody was detrimental to the child. The court granted the appellant's petition for temporary visitation. The mother filed a motion to vacate the temporary visitation order and a motion to dismiss the petition. The court suspended its temporary visitation order. The trial court heard arguments on the motion to dismiss, construed as a motion for judgment on the pleadings. It determined that the appellant, who was not a parent of the child, could not, as a matter of law, establish that parental custody was detrimental to the child in the absence of an allegation of abuse. The trial court relied on the decision in *Guardianship of Z.C.W.* (1999) 71 Cal .App.4th 524 as holding that the loss of a child's relationship with a nonparent cannot provide a legal basis of detriment when the guardianship is opposed by a parent. The court granted the motion to dismiss. The appellant filed a timely motion to vacate the judgment.

The Court of Appeal reversed the decision of the trial court because the trial court applied the wrong legal standard in requiring a showing of serious abuse or neglect and interpreted a precedent case erroneously. The appellant filed a petition for guardianship under Probate Code section 1510 and alleged that parental custody was detrimental to the child. (Fam. Code, § 3041.) The appellant contended on appeal that the trial court had erred by dismissing her petition without giving her an opportunity to prove that parental custody was detrimental to the child.

Probate Code section 1510 provides, in pertinent part, that a person may file a petition for guardianship of the child on behalf of the child. The appellant in this case had standing to file the petition; however, because she is a nonparent, the burden on her was quite high if the court was to grant the petition. The appellant's petition met the pleading requirements of the Probate Code and alleged that parental custody was detrimental to the child under Family Code section 3041.

The trial court found this to be insufficient because the appellant did not allege serious abuse or neglect. The appellant court concluded that, although specific findings of abuse are necessary for the dependency court to remove a child, nothing in Probate Code section 1514(b) (decision to appoint a guardian) or Family Code section 3041 (granting custody to a nonparent over the objections of a parent requires a finding of parental custody as detrimental to the child) requires a showing of evidence of serious abuse, neglect, or abandonment.

Continued on page 27

Other Cases Involving Children
Continued from page 26

The appellate court stated, "The preference for parental custody is adequately protected by requiring that the petitioner demonstrate by clear and convincing evidence that parental custody is detrimental to the child, without attempting to enumerate, by judicial gloss on the statutory language, what categories of factual circumstances may or may not be recognized as detrimental to the child." The appellate court found that the trial court had applied the wrong legal standard in this case by requiring a showing of serious abuse, neglect, or abandonment.

The trial court had also found that the psychological harm caused by the loss of a relationship with a nonparent is not, as a matter of law, a basis for finding that parental custody is detrimental to the child. The appellate court, however, concluded that the trial court had erroneously interpreted *Guardianship of Z.C.W.* (1999) 71 Cal.App.4th 524 as a matter of law. The appellant in this case, unlike the appellant in *Z.C.W.*, was not able to present her case at an evidentiary hearing. The *Z.C.W.* holding—that the appellant did not show by clear and convincing evidence that parental custody was detrimental to the child—did not support the trial court's dismissal of the petition without a hearing. The appellant in this case should have the opportunity to present relevant evidence to the trial court.

The appellate court cautioned that the decision in this case was limited and it did not express an opinion on the merits of the petition. The appellate court also cautioned that the decision was not an endorsement for use of a guardianship petition as a forum for a nonparent to obtain visitation rights over the objection of the parent.

***In re Anthony P.* (2000) 84 Cal.App. 4th 1112 [101 Cal.Rptr.2d 423]. Court of Appeal, Fourth District, Division 3.**

The trial court terminated the parental rights of a mother who suffers from schizoaffective disorder. The mother, according to her physicians, is unable to provide for her own basic needs and will always remain in a locked facility.

The child, nine years old, resided with his mother's sister, who was interested in adopting him. The child's father is unknown and his parental rights were terminated. When the mother's sister filed a petition to declare the child free from parental custody and control, the mother opposed the petition, claiming that Title II of the Americans With Disabilities Act (ADA) prevented the termination of parental rights. The trial court rejected this argument. The trial court, in freeing the mother of parental custody and control over her child, also determined that the mother is mentally disabled and is unable to care for the child in the foreseeable future. The mother appealed.

The Court of Appeal affirmed the judgment of the trial court. The mother asserted that Title II of the ADA preempts states from terminating the parental rights of persons who are gravely disabled. States may not discriminate against disabled persons in the provision of their "services, programs, or activities" (42 U.S.C. § 12132), and mental disorders are disabilities that fall within the purview of the ADA. Family Code sections 7826 and 7827 provide that when a parent has been declared to be developmentally disabled, mentally ill, or mentally disabled and will not be able to support or control the child in a proper manner, a proceeding under section 7802 may be brought. The appellate court determined, based on precedent case law and its own analysis, that the type of proceeding of *Anthony P.* is not a "service, program, or activity" within the meaning of Title II of the ADA. Therefore, the federal law does not pre-empt the termination of parental control and custody. The mother also argued that she should have been interviewed by the state's investigating social worker and that her rights could not be terminated because the father also had not been interviewed. Neither of these arguments persuaded the appellate court. The social worker had interviewed the mother's treating physician and learned that the mother was unable to discuss the issues rationally. Also, the mother had no standing to raise the father's lack of due process in her own case objecting to the termination of her parental rights.

***Adoption of Aaron H.* (2000) 84 Cal.App.4th 786 [101 Cal.Rptr.2d 45]. Court of Appeal, First District, Division 4.**

On September. 29, 1998, the child was born to a teenage mother who put him up for adoption. Approximately two and one-half months after the child was born, the teenage mother's aunt and uncle filed for adoption with the support of the mother. Richard M. was named as the child's father in the adoption petition. On December 24, 1998, the attorney for the aunt and uncle served notice on Richard M., stating that he might be the natural father of the child who had been placed for adoption and that any action on his part must be brought within 30 days of the service of the notice. Thirty days passed with no action from Richard M. On February 8, 1999, the attorney for the aunt and uncle obtained an ex parte order stating that the alleged natural father is Richard M., that further notice to and consent of the alleged father was not necessary, and that the alleged natural father had no parental rights.

However, on February 1, 1999, Richard M. filed a complaint to establish a parental relationship. He claimed that he had believed the letter of notice

Continued on page 28

Other Cases Involving Children

Continued from page 27

to be an error (because the mother was informing people that someone else was the father) until he received a second notice from the adoptions office dated January 25, 1999. On February 25, 1999, Richard M. filed a petition to consolidate the adoption proceedings with his complaint and a motion to set aside the February 8 order. He requested a blood test to determine paternity. The parties voluntarily agreed to blood tests, and the results showed Richard M. as the biological father of the child. The court then denied the father's request to consolidate the actions and set a hearing to address the father's request to vacate the February 8 order terminating parental rights. At the subsequent hearing, the trial court denied Richard M.'s motion to set aside the order terminating his parental rights and therefore dismissed his complaint and the petition to establish his parental relationship and rights. Richard M. appealed.

The Court of Appeal affirmed the decision of the trial court. The trial court had analyzed the motion to set aside the order terminating the father's parental rights under Code of Civil Procedure section 473(b). Section 473(b) requires the party seeking relief to do so with reasonable diligence and stipulates that the trial court's determination will be reversed only for abuse of discretion. In this case, the trial court found that because of the notice set forth in the attorney's letter to Richard M., he knew he had to bring an action within 30 days and that failure to do so might result in the termination of his parental rights. Richard M. filed his complaint 39 days after the notice was served and provided no credible reason that explained the delay. On appeal, Richard M. did not contend the legal or factual accuracy of the trial court's comments about his lack of credibility regarding his failure to act. Because the father had failed to act in a timely manner and there was no justifiable reason for this delay, the trial court denied the motion to set aside its previous order terminating the father's parental rights. The appellate court determined that the trial court had not abused its discretion and affirmed its decision.

In re Liam L. **(2000) 84 Cal.App.4th 739 [101 Cal.Rptr.2d 13]. Court of Appeal, Fourth District, Division 1.**

The juvenile court determined that a man was the presumed father of a child in a dependency case based solely on the fact that he had signed a voluntary declaration of paternity.

One day after the child was born, the child underwent a colostomy surgery. The next day, both the mother and the man signed a voluntary declaration of paternity at the hospital on a form prepared by the Health and Welfare Agency of the California Department of Social Services ("the agency"). The mother and the man did not have stable housing and missed training sessions to teach them colostomy care. A Welfare and Institutions Code section 300(b) petition was filed because the mother and the man were unable to provide for the child's medical needs. The mother was married to another man, the presumed father by marriage, but efforts to locate him were unsuccessful.

At the jurisdiction hearing, the court found the first man (to whom the mother was not married) to be the presumed father based on the signed declaration of paternity. Because this resulted in two presumed fathers, the court conducted a hearing under Family Code section 7612(b), found the first man to be the sole presumed father, and entered a paternity judgment in his favor. The child was placed in a foster home, and reunification services were ordered for the mother and presumed father. The agency appealed, claiming that the man was not entitled to presumed father status in a dependency proceeding merely because he had signed a voluntary declaration of paternity in compliance with Family Code section 7570 et seq.

The Court of Appeal determined that the juvenile court was proper in declaring the male signatory of a voluntary declaration of paternity to be the presumed father in a dependency proceeding. Section 7570(b) states that the state has a compelling interest in allowing for voluntary declarations of paternity so that there would be an increase in paternity establishment, an increase in the number of children with access to child support and benefits, and a decrease in the need for establishing paternity through the lengthy and expensive court process. The mother and the man signed a voluntary declaration of paternity two days after the child's birth. The declaration stated that it gave the father parental rights such as the right to seek custody and visitation through court action and to be consulted about the child's adoption. Declarations signed by the parents and filed with the Department of Social Services establish the paternity of a child with the same force and effect as a judgment of paternity issued by a court, and the voluntary declaration of paternity is recognized as a basis for the establishment of an order for child custody, visitation, and child support. (Fam. Code, § 7573.)

For a man to become a presumed father, he must fall within one of the categories of Family Code section 7611. The Legislature amended that section in 1994 to provide that a man will become a presumed father if he meets the conditions of section 7570, which includes establishment of paternity by voluntary declaration. A father who has established paternity by a voluntary declaration in compliance with section 7570 et seq. is entitled to the status of a presumed father.

Center for Families, Children & the Courts
455 Golden Gate Avenue
San Francisco, California
94102-3660
Phone: 415-865-7739 or 865-7741
Fax: 415-865-7217 or 865-4399
E-mail: cfcc@jud.ca.gov
Web site:
www.courtinfo.ca.gov/programs

Center for Families, Children & the Courts
Update
March 2001
Volume II, no. 1